

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [REDACTED] 1921

No. [REDACTED] 141

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT No.
2 OF LAFAYETTE COUNTY, ARKANSAS, PETITIONERS,

vs.

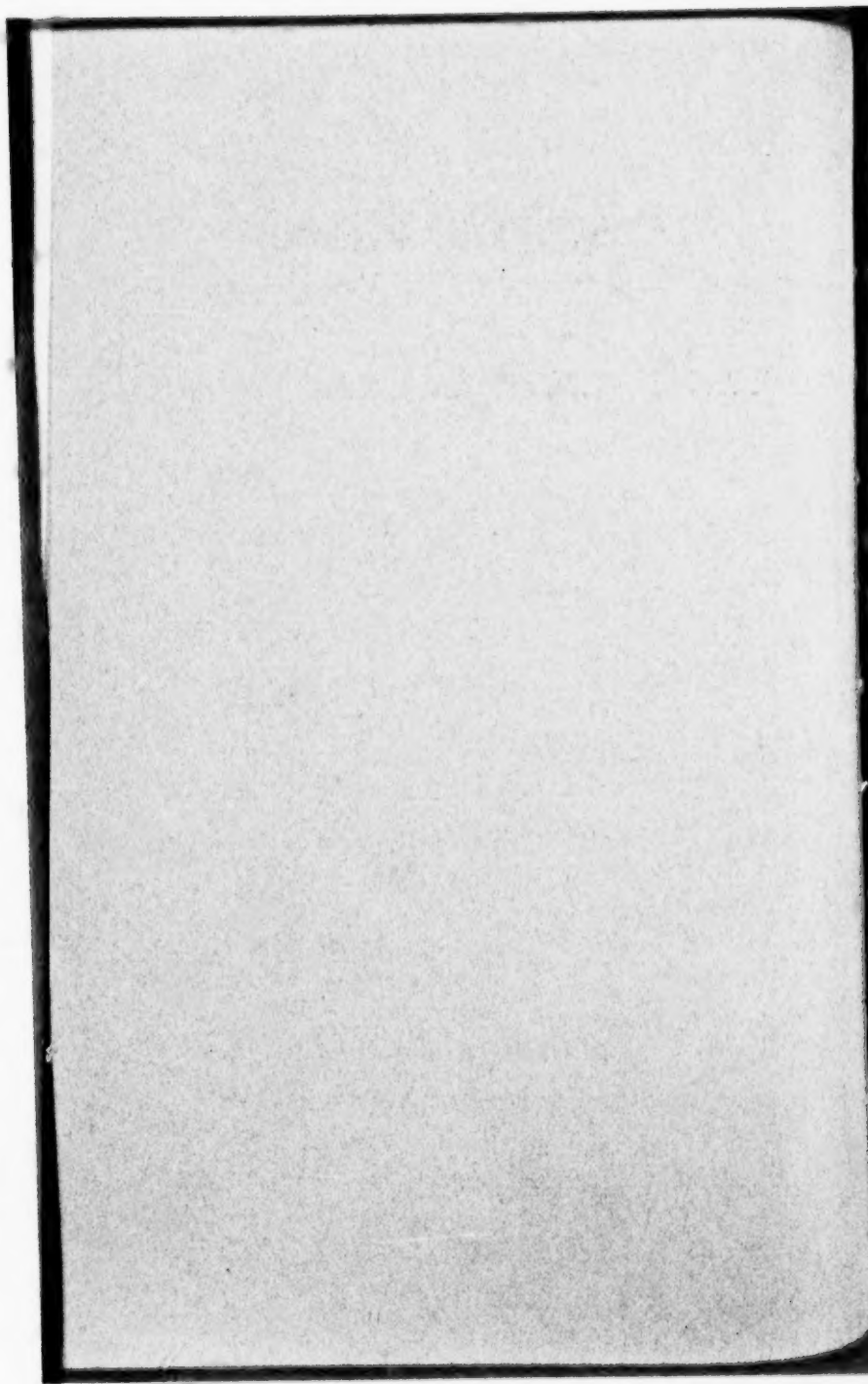
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITION FOR CERTIORARI FILED SEPTEMBER 18, 1920.

CERTIORARI AND RETURN FILED NOVEMBER 6, 1920.

(27,909)



(27,909)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 552.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT No.
2 OF LAFAYETTE COUNTY, ARKANSAS, PETITIONERS,

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT.

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a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1919, of said Court, before the Honorable Walter H. Sanborn and the Honorable John F. Carland, Circuit Judges, and the Honorable Arba S. Van Valkenburgh, District Judge.

Attest:

[Seal of the United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,

Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore transcripts of record pursuant to writs of error directed to the District Court of the United States for the Western District of Arkansas were filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in certain causes wherein St. Louis Southwestern Railway Company was Plaintiff in Error, and Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas was Defendant in Error, in which cause the transcript of record was filed and docketed in said Circuit Court of Appeals on July 31, 1919, as No. 5454, and also wherein Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas was Plaintiff in Error, and St. Louis Southwestern Railway Company was Defendant in Error, in which cause the transcript of record was filed and docketed on August 11, 1919, as No. 5470. Said transcripts as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, are in the words and figures following, to-wit:

1 *(Citation on Appeal of the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, and Acceptance of Service.)*

United States of America to St. Louis Southwestern Railway Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this Citation bears date, pursuant to a writ of error, filed in the Clerk's office of the District Court of the United States for the Western District of Arkansas, wherein Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Frank A. Youmans, Judge of the District Court of the United States for the Western District of Arkansas, this 25th day of June in the year of our Lord one thousand nine hundred and nineteen.

FRANK A. YOUNMANS,
*Judge United States District — for the
Western District of Arkansas.*

Service of the within Citation is hereby accepted this June 30, 1919.

T. J. GAUGHAN or
GAUGHAN & SIFFORD,
Attorney for St. Louis Southwestern Railway Company.

Endorsed: Filed in the District Court on July 29, 1919.

2 (*Citation on Appeal of the St. Louis Southwestern Railway
Company and Acceptance of Service.*)

United States of America to Commissioners of Road Improvement
District No. 2 of Lafayette County, Arkansas, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this Citation bears date, pursuant to a writ of error, filed in the Clerk's office of the District Court of the United States for the Western District of Arkansas, wherein St. Louis Southwestern Railway Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Frank A. Youmans, Judge of the District Court of the United States for the Western District of Arkansas, this 25th day of June in the year of our Lord one thousand nine hundred and nineteen.

FRANK A. YOUNMANS,
*Judge United States District Court for the
Western District of Arkansas.*

Service of the within Citation is hereby accepted this June 30, 1919.

HENRY MOORE, JR.,
*Attorney for Commissioners of Road Improvement
District No. 2 of Lafayette County, Arkansas.*

Endorsed: Filed in the District Court on July 29, 1919.

(Writ of Error Sued Out by the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, and Clerk's Return.)

UNITED STATES OF AMERICA, *ss.*:

The President of the United States of America to the Honorable Judges of the District Court of the United States for the Western District of Arkansas, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the May Term, 1919, thereof, between Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, Plaintiff, and St. Louis Southwestern Railway Company, Defendant, a manifest error hath happened, to the great damage of the said Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said records and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 23rd day of August, 1919, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 26th day of June, in the year of our Lord one thousand nine hundred and nineteen.

Issued at office in the City of Texarkana, Arkansas, with the seal of the District Court of the United States for the Western District of Arkansas, and dated as aforesaid.

[Seal of the Dist. Court, West. Dist. of Arkansas, U. S. A.]

WM. S. WELLSHEAR,
*Clerk District Court United States,
Western District of Arkansas.*

Allowed by

FRANK A. YOUNG,
Judge.

Return to Writ.

UNITED STATES OF AMERICA,

Western District of Arkansas, ss:

In obedience to the command of the within Writ, I herewith transmit to the United States Circuit Court of Appeals, for the Eighth Circuit, a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

4 In witness whereof, I hereunto subscribe my name and affix the seal of said United States District Court, for the Western District of Arkansas, at office in the city of Fort Smith, Arkansas, this 29th day of July, A. D., 1919.

[Seal of the Dist. Court, West. Dist. of Arkansas, U. S. A.]

WM. S. WELLSHEAR,
*Clerk District Court of the United States,
Western District of Arkansas.*

Endorsed: Filed in the District Court on June 25, 1919.

(Writ of Error Sued Out by the St. Louis Southwestern Railway Company and Clerk's Return.)

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the District Court of the United States for the Western District of Arkansas, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the May Term, 1919, thereof, between Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, Plaintiffs, and St. Louis Southwestern Railway Company, Defendant, a manifest error hath happened, to the great damage of the said St. Louis South-Western Railway Company, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said records and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 23rd day of August, 1919,

to the end that the record and proceedings aforesaid being inspected,
the United States Circuit Court of Appeals may cause further to be
done therein to correct that error, what of right, and accord-
5 ing to the laws and customs of the United States, should be
done.

Witness, the Honorable Edward D. White, Chief Justice of
the United States, this 25th day of June, in the year of our Lord
one thousand nine hundred and nineteen.

Issued at office in the City of Texarkana, Arkansas, with the seal
of the District Court of the United States for the Western District
of Arkansas, and dated as aforesaid.

[Seal of the Dist. Court, West. Dist. of Arkansas, U. S. A.]

WM. S. WELLSHEAR,
Clerk District Court United States,
Western District of Arkansas.

Allowed by

FRANK A. YOUMANS,
Judge.

Return to Writ.

UNITED STATES OF AMERICA,
Western District of Arkansas, ss:

In obedience to the command of the within Writ, I herewith trans-
mit to the United States Circuit Court of Appeals, for the Eighth
Circuit, a duly certified transcript of the record and proceedings in
the within entitled case, with all things concerning the same.

In Witness Whereof, I hereunto subscribe my name and affix the
seal of said United States District Court, for the Western District of
Arkansas, at office in the City of Fort Smith, Arkansas, this 29th
day of July, A. D. 1919.

[Seal of the Dist. Court, West. Dist. of Arkansas, U. S. A.]

WM. S. WELLSHEAR,
Clerk District Court of the United States,
Western District of Arkansas.

Endorsed: Filed in the District Court on June 25, 1919.

6 District Court of the United States, Western District of
Arkansas, Texarkana Division.

No. 413, Law.

In the Matter of Road Improvement District No. 2 of Lafayette
County, Arkansas. Assessment of Benefits Against St. Louis South-
western Railway Company.

Record of Proceedings in the District Court of the United States
for the Western District of Arkansas, Texarkana Division, in the
Above-entitled Cause.

TRANSCRIPT OF REMOVAL.

Filed in the U. S. District Court July 18, 1918.

(Record Entry of the Filing of Preliminary Surveys, etc.)

October 8th, 1917.

In the County Court of Lafayette County.

In the Matter of a Road Improvement District for Improving a
Certain Road from Columbia County Line to Red River.

Now on this day are presented to the court the preliminary sur-
veys, plans, specifications and estimates prepared by the State High-
way Engineer of the road which it is proposed to construct and im-
prove within said district and the same are on this day filed in open
court.

Recorded in Road Record Book 1 Page 564.

(Preliminary Estimate Made by H. R. Carter, State Highway Engineer, of the Cost of the Proposed Public Road in Lafayette County, Arkansas.)

Department State Lands, Highways and Improvements, State of Arkansas.)

Highway Commission,
Little Rock, September 1917.

Preliminary Estimate Lafayette County—Columbia County Line
West via Buckner, Stamps, Lewisville to Red River, Gravel Road
12 ft. Wide, 6 in. Deep Compacted, 22 ft. Dump—Total Length
21.61 Miles.

5 acres grubbing.....	@ \$55.00..	\$275.00
5 acres clearing.....	@ 20.00..	100.00

7

63,000 cubic yds. earthenwork.....	@ .30..	18,900.00
16,840 cu. ft. of fence moving.....	@ .03..	495.20
168 lin. ft. 12 in. pipe.....	@ 1.20..	201.60
72 " " 15 " ".....	@ 1.50..	108.00
48 " " 18 " ".....	@ 2.00..	96.00
72 " " 24 " ".....	@ 2.80..	201.60
35 cu. yds. plain concrete for headwalls...	@ 15.00..	525.00
434 cu. yds. reinforced concrete for culverts	@ 20.00..	8,680.00
310 lin. ft. timber bridges complete.....	@ 7.00..	2,170.00

31,752.40

Lewisville gravel F. O. B. point of delivery, unloaded,
hauled, spread, sprinkled and rolled for finishing road
12 ft. wide, 6 in. deep compacted 2,200 tons per mile
47,542 tons average haul $\frac{1}{2}$ mile @ 1.30..... \$61 804.60

Grand Total..... 93,557.00

Overhead and incidentals 7%..... 6,549.00

Total Cost..... 100,000.00

Cost per mile \$4,632.40.

H. R. CARTER,
State Highway Engineer.

Endorsed: Filed this October 8th, 1917, J. E. Searcy, Clerk.

(Petition for Road Improvement District to be Organized.)

To the Honorable County Court, Lafayette County:

The undersigned who constitute a majority in land value in acreage or in number of the land owners within the following described territory:

All of Section 31, 32 and right bank of Dorcheat Bayou, all of Section 33 all in township 15 South Range 22 West, right bank of Dorcheat Bayou all of Section- 5, 6, 7, 8, 18, 19, 30, 31, all in township 16 south range 22 West. All of Sections 31, 32, 33, 34, 35, 36 all in township 15 South Range 23 West.

All of Township 16 South Range 23 West, lying west of Dorcheat Bayou. All of Section- 31, 32, 33, 34, 35, 36 all in township 15 South Range 24 West; All of township 16 South Range 24 West. Left bank of Red River all of sections 32, 33, 34, 35, 36, all in township 15 south range 25 West. Left Bank of Red River all of Sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36, all in township 16 south range 25 West.

Including all lots and blocks and all other real property in or surrounding the towns of Buckner, Stamps, Lewisville and Joella or any other towns lying within the above described territory.

Pray that the same be formed into a Road Improvement District, in pursuance of the provisions of Act \approx 338 of the General Assembly of the State of Arkansas, of the year 1915; and have filed herewith a plat upon which the boundaries of said district are plainly indicated, showing the roads, which it is intended to construct and improve as nearly as practicable said roads being as follows:

Commencing at a point on the County Line between Lafayette and Columbia Counties about one half mile north of the St. Louis S. W. Railroad, running thence in a westerly direction to the town of Buckner; thence south about one fourth of a mile; thence west to the incorporated line of the town of Stamps; thence in a northwesterly direction for a distance of about two miles; thence in a southwesterly direction to the town of Lewisville; thence on west on north side of railroad for about two miles; thence across said railroad in a southwesterly direction to Spirit Lake; thence in a northerly direction across railroad at Moor's Spur; thence west on north side of railroad to road crossing at Joella; thence across railroad; thence west on south side of railroad to Red River; The above road being continuous throughout its entire length.

And your petitioners file a good bond, conditioned that they will pay all court costs and legal advertising that may accrue in the event said district is not established.

Your petitioners agree to any change that may hereafter be made by the court, or the Commissioners of the District in the *the* line of said road, provided that the general purpose of securing an improved highway between the termini mentioned is attached.

9 Your petitioners further pray that H. A. McCants, J. M. Hudgins, and J. D. Hanson three resident owners of real property, owning lands in said district and men of good business ability, be appointed by the Court as Commissioners of said District.

Henry Moore, Henry Moor, Jr., W. B. Nash, L. J. Reynolds, B. M. Montgomery, T. K. Lemay, N. D. Harrell, H. A. McCants, C. M. Shaw, Joe Boyd, Ed Patten, J. F. Bright, D. W. Gladney, Lucy Du Bose, J. H. Landes, J. W. Velvin, T. A. Griswold, G. G. Boyett, A. L. Mashaw, A. T. Wood, H. L. Lester, B. H. Dobson, J. W. Morris, J. W. Johnson, R. L. Montgomery, L. D. Rogers, W. L. Atkinson, W. E. Roach, J. F. Devanie, J. T. Canida, Bright & Barham, R. T. Lester, J. S. Ford, J. B. Herndon, J. E. Searey, W. L. Nance, R. H. Harrison, L. M. Hanson, Aggie French, Ed. Williams, T. R. Higgs, A. T. Stewart, R. L. Berry, Douglass Gaines, W. S. A. Jackson, J. E. Barham, Ramsey Featherstone, G. H. Hall, Rose Richards, S. F. McKay, J. T. Newton, A. S. White, Geo. W. Means, Ike Parks, Morton Collins, William Gault, Miss. Vall. Land & Live Stock Co., by Carl Rennieke, Rob Emery, William Emery, P. G. Dobson, Mrs. Lucy Biblinger, W. M. Brown, Fred Cabiness, S. D. McGill, Green Willingham, Will Brown, G. T. Whatley, H. M. Canida, George Manning, M. D. Lester, Hough Gaines, Andy Green Pondou, Ellen Williams, R. L. Bradshaw, Albert Jones, H. L. Wheeler, Elite Moore, Sam Ross, Rich Purdue, C. M. Morgan, Claude Cabiness, Wes Terry Harkless Harper, J. B. Armor, Dole Caonway, William Green, G. M. McKnight, W. D. Stewart, C. B. Faffar, J. C. Templeton, I. L. Nic, C. H. Barham, E. D. Dobson, L. A. McClendon, Inis May, W. Walker, A. C. Foster, C. B. Lemay, H. A. Kirtly, L. B. Patten, Fordyce Butler, J. A. Stewart, E. L. Moore, J. W. Du Bose, P. F. Wright, A. S. Johnson, J. D. Buath, P. D. Burton, R. L. Searey, D. L. King, J. H. Warren, B. P. Wheat, Jordan Taylor, C. T. Short, W. F. Du Bose, Jock Adams, J. E. Barnes, R. E. French, F. W. Youmans, J. V. Bray, Jno. M. King, L. H. Baldwin, Thomas Wise, E. M. Watson, Clyde Cabiness, J. L. Dodson, William Walker, O. B. Smith, Toby Pim, Jno. Elmore, Charlie Wesley, J. T. Harrell, J. H. Dobson, Will J. Word, Joe Cabiness, Wright Hale, Molecia Wilkerson, Frank Wilkerson, Louis Heilbron, Henry Moore, Katie Moore, Wm. McMillan, J. C. Russell.

10 On west on north side of railroad for about two miles: thence across said railroad in a southwesterly direction to Spirit Lake; thence in a northerly direction across railroad at Moor's Spur; thence west on north side of railroad to road crossing at Joella; thence across railroad; thence west on south side of railroad to Red River. The above road being continuous throughout its entire length.

And your petitioners also file a good bond, conditioned that they will pay all costs and legal advertising that may accrue in the event said district is not established.

Your petitioners agree to any changes that may hereafter be made by the Court, or the commissioners of the District in the line of said road, provided that the general purpose of securing an improved highway between the termini mentioned is attached.

Your petitioners further pray that H. A. McCants, J. M. Hudgins and J. D. Hanson, three resident owners of real property, owning lands in said district, and men of good business ability, be appointed by the court as Commissioners of said district.

Bodcaw Lumber Co., of Louisiana, Inc. By W. L. Boney, Secy. & Treas. J. C. Stewart, J. B. Burton, R. W. Yarbrough, V. C. Hill, R. Buchanan, W. M. Burnett, Joe C. Phillips, A. C. Kelly, J. A. Thomas, Dr. E. E. Baker, A. P. Beasley, E. W. Vaughn, J. P. Farr, L. A. Payne, F. L. Ward, J. D. Griswold, Stamps Ice & Fuel Co., By J. M. Hudgens, Mgr. M. B. Hinton, L. T. Strange, M. D. Geo. Holmes, Bodcaw Bank, By A. P. Beasley, Cashier, Beasley Hardware Co., L. A. Baker, Mgr. L. A. Baker, R. E. Tatom, J. M. Beasley, H. R. Petry, H. R. Elliott, J. R. Tatom, E. S. Hamilton, J. M. H. J. A. Warren, C. M. Norwood, C. A. Kimball & Co., Per King, J. M. Thomas, C. A. Jarnagin, W. T. Kitchens, By J. M. H., W. H. Veasey, J. A. Lachey, B. F. Callicot, A. P. Massey, V. Mullins, R. L. Lherison, W. Smithy, J. M. Hudgens, Geo. W. Howard, C. A. Kimball, T. N. Strange, W. H. Ham, O. H. Scantland, J. M. Sanders, L. D. Galloway, A. J. Chandler, F. A. Baker, G. F. Baker, A. S. Hoover, H. H. Hanson, W. N. Rogers, L. F. Davis, M. F. Beasley, R. T. Bourland, Arthur Baker, J. R. Hamm, By J. M. Hudgens, E. H. Garrett, By J. M. Hudgens, Diamond Shingle Creosoting Co. By F. M. Shewmake, Treas. Mrs. Maggie Stewart, J. H. Smythe, J. W. Byrnes, H. J. Hanson, G. H. Rushton, By J. R. Stewart, A. S. Hayes, L. E. Hinton, J. F. Baker, C. T. Baker, W. A. Hearron, Monroe & Stephens (Cold) Witness T. F. Gillespie, Frank Mills.

11 Witness T. F. Gillespie, Jim Burdette, Geo. Hale, J. R. Robinson, A. W. Flowers, Fred Lincoln, Jim Boyd, J. W. Williamson, R. R. Brown, Chester Boyd, R. J. Finnis, G. Hawaks, Sam Randle, Clay Dillard, R. J. Gamble, Alix Cornish (his X mark) Ed. Briggs, A. Brewster, Gen. Kennedy (his X mark) rich Cornish, O. L. Porter, Geo. Holmes, Tom Powell, Albert Jones, J. B. Ham, D. Meadows (his X mark) witness J. M. Hudgens, J. C. Mitchell, W. E. Stone, C. Strange, J. L. Matthews, J. W. Gainer, Joe Gainer, E. Ravenscroft, Mrs. C. W. Kimball, Alonzo Frazier, Abram A. Murray, Rubin Ellis, Arby Ellis, W. O. Cotton, L. A. Kennedy, John L. Davis, Walter Williams, S. A. Rickett, E. E. Cornelius, W. A. Bennett, C. L. Johnson, J. N. Barham, J. B. Birmingham, W. L. Fort. By J. M. H. W. P. Riggins, Charlie Seibert, R. E. Strange.

Petition.

To the Honorable Court of Lafayette County:

The undersigned, who constitute a majority in land value, in acreage or in number of the land owners within the following described territory:

All of Section 31, 32 and right bank of Dorcheat Bayou, All of Section 33 all in township 15 south, range 22 west, right bank of Dorcheat Bayou, all of sections 5, 6, 7, 8, 18, 19, 30, 31, all in township 16 south, range 22 west. All of Sections, 31, 32, 33, 34, 35, 36 all in township 15 south range 23 west.

All of township 16 south range 23 west, lying west of Dorcheat Bayou. All of Sections 31, 32, 33, 34, 35, 36, all in township 15 south range 24 west. All of township 16 south range 24 West. Left Bank of Red River all of sections 32, 33, 34, 35, 36 all in township 15 south range 25 West. Left Bank of Red River all of sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36, all in township 16 south range 25 west.

Including all lots and blocks and all other real property in or surrounding the towns of Buckner, Stamps, Lewisville and Joella or any other towns lying within the above described territory.

Pray that the same may be formed into a Road Improvement District, in pursuance of the provisions of Act $\#338$ of the General Assembly of the State of Arkansas, of the year of 1915; and have filed herewith a plat, upon which the boundaries of said district are plainly indicated, showing the roads, which it is intended to construct and improve as nearly as practicable said roads being as follows:

Commencing at a point on the County line between Lafayette and Columbia Counties about one half mile north of the St. Louis, S. W. Railroad, running thence in a westerly direction to the town of Buckner; thence south about one fourth of a mile; thence west to the incorporated line of the town of Stamps; thence in a northwesterly direction for a distance of about two miles; thence in a southwesterly direction to the town of Lewisville, thence on west on north side of Railroad for about two miles; thence across said Railroad in a southwesterly direction to Spirit Lake; thence in a northerly direction across railroad Moor's Spur; thence west on north side of railroad to road crossing at Joella; thence across railroad; thence west on south side of railroad to Red River.

The above being continuous throughout its entire length.

And your petitioners file a good bond, conditioned that they will pay all court costs and legal advertising that may accrue in the event said district is not established.

Your petitioners agree to any change that may hereafter be made by the Court, or the Commissioners of the District, in the line of said road, provided that the general purpose of securing an improved highway between the termini mentioned is attained.

Your petitioners further pray that H. A. McCants, J. M. Hudgins and J. D. Hanson three resident owners of real property owning lands in said district, and men of good business ability be appointed by the court as commissioners of said district.

J. D. Bourland, J. M. Praeger, H. B. Pinkin, G. F. Hutchinson, O. T. Nix, B. A. Blackman, S. P. Ross, W. I. Stokes, E. W. Tomme, B. C. Bumpus, J. M. Hendrix, B. P. Baker, J. A. Teague, Carl Teague, O. D. Roper, J. B. Willis, J. J. Hanson, W. P. Riggins, C. A. Wise, G. H. Lumpkin, J. T. Cooper, U. L. Horton, B. F. Harrison, W. T. Alphin, Lee J. Tidwell, L. C. Cook, J. A. Cook, J. A. Baker, J. L. Wooten, J. E. Gantt, R. E. Gantt, S. A. McClure, N. L. Eddy, L. F. Foster, B. F. Burnes, T. P. Fincher, W. N. Blake, Chas. Taylor, G. A. Wheeler, G. B. Wheeler, W. S. Nix, T. L. Vickers.

13 Endorsed: Road Improvement District. Petition. Filed January 18, 1918, J. E. Searey, County Clerk of Lafayette County. Petition granted and Road District organized 2-16-1918. T. P. Le May, Judge.

(Bond for Costs.)

Whereas, Parties claiming to be a majority in the land value, acreage or number within the following described territory:

All of section 31, 32 and right bank of Dorcheat Bayou all of section 33 all in township 15 south range 22 west, right bank of Dorcheat Bayou, all of sections 5, 6, 7, 8, 18, 19, 30, 31, all in township 16 south range 22 west, all of sections 31, 32, 33, 34, 35, 36, all in township 15 south range 23 west.

[Al-] of township 16 south range 23 west, lying west of Dorcheat Bayou. All of sections 31, 32, 33, 34, 35, 36 all in township 15 south range 24 west. All of township 16 south range 24 west. Left Bank of Red River all of sections 32, 33, 34, 35, 36, all in township 15 south range 25 west. Left bank of Red River all of sections 1, 2, 3, 4, 5, 8, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36, all in township 16 south range 25 west.

Including all lots and blocks and all other real property in or surrounding the towns of Buckner, Stamps, Lewisville and Joella or any other towns lying within the above described territory.

Having filed a petition, praying that said territory be organized into a Road Improvement District, under Act No. 338, of the General Assembly of the State of Arkansas, of the session of 1915.

Now, Therefore, in consideration of the sum of \$1.00 to us in hand paid, and other sufficient considerations we hereby undertake that the petitioners will pay all court costs and legal advertising that may accrue in the event that said district is not established.

Witness our hands this 18th day of January, 1918.

HENRY MOORE.

HENRY MOORE, JR.

Bond approved in open court. 1-18-18.

T. P. LE MAY,

County Judge of Lafayette County.

Endorsed: Filed Jany. 18, 1918. J. E. Searey, County Clerk Lafayette County, Arkansas.

14 (Order to Show Cause In re Formation of Road District.)

In the Lafayette County Court, January 18, 1918.

In the Matter of a Petition for a Road Improvement District to Improve the Public Road Running East and West Through Lafayette County, Through the Towns of Buckner, Stamps and Lewisville, to a Point on the East Bank of Red River Opposite Garland City.

On this day is presented to the County Court of Lafayette County, a petition signed by N. D. Harrell, H. A. McCants, and others, purporting to be a majority in land value, acreage or number of the land owners within certain territory described in said petition, and praying that an improvement District be organized for the purpose of improving a certain public road in [in] said petition.

All of section 31, 32 and right bank of Dorcheat Bayou, all of section 33 all in township south range 22 west, right bank of Dorcheat Bayou, all of sections 5, 6, 7, 8, 18, 19, 30, 31, all in township 16 south range 22 west. All of sections 31, 32, 33, 34, 35, 36 all in township 15 south range 23 west; all of township 16 south range 23 west, lying west of Dorcheat Bayou. All of sections 31, 32, 33, 34, 35, 36, all in township 15, south range 24 west. All of township 16 south range 24 west. Left bank of Red River all of sections 32, 33, 34, 35, 36, all in township 15 south range 25 west. Left bank of Red River, all of sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36, all in township 16 south range 25 west.

Including all lots and blocks and all other real property in or surrounding the towns of Buckner, Stamps, Lewisville and Joella or any other towns lying within the above described territory.

There having been filed with said petition a plat on which the boundaries of said district are plainly indicated and showing the road which it is intended to construct and improve; and said petition has been duly filed in this court and at the same time there was filed a good bond, conditioned as required by law, and said bond is hereby approved.

And it appearing that application was duly made to the State Highway Commission for preliminary plans and specifications for said improvement, as required by law, and that such preliminary plans, specifications and estimates were prepared in the manner required by law by the State Highway Commission and filed in this court before any of the petitions for said improvement was circulated.

It is therefore ordered that on the 16th day of February, 1918, at 10 A. M. is fixed by this court as the day on which the court will hear parties who desire to show cause for or against the establishment of said district, and the clerk of this court is ordered to publish the following notice in the Lewisville Herald, a weekly newspaper, having a bona fide circulation in Lafayette County, Arkansas, by three consecutive insertions, the last to be not less than five days before the date of the hearing.

Notice.

Notice is hereby given that there has been filed in this Court a petition, signed by N. D. Harrell, H. A. McCants and others, purporting to be a majority of land value, acreage or number of land owners within a proposed road district embracing the following territory:

All of sections 31, 32 and right bank of Dorchest Bayou, all of section 33 all in township south range 22 west right bank of Dorchest Bayou all of Sections 5, 6, 7, 8, 18, 19, 30, 31 all in township 16 south range 22 west. All of sections 31, 32, 33, 34, 35, 36, all in township 15 south range 23 west;

All of township 16 south range 23 west, lying west of Dorchest Bayou. All of sections 31, 32, 33, 34, 35, 36, all in township 15 south range 24 west. All of township 16 south range 24 west. Left bank of Red River all of sections 32, 33, 34, 35, 36 all in township 15 south range 25 west. Left bank of Red River all of sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36, all in township 16 south range 25 west.

Including all lots and blocks and all other real property in or surrounding the towns of Buckner, Stamps, Lewisville, and Joella, or any other towns lying within the above described territory.

And praying the improvement of certain public roads from Columbia County line running east and west through Lafayette County, to a point on the east bank of Red River opposite Garland

City

16 And that a preliminary survey and estimate have been made by the State Highway Department, as required by Law, and filed in this Court before said petition was circulated and there was also filed with said petition a good bond, conditioned as required by law.

Now, Therefore, all persons, firms or corporations owning lands or other real property in the proposed district are hereby notified to appear before the County Court on the 16th day of February, 1918, at the hour of 10 A. M. to show cause for or against the establishment of said road improvement district.

T. P. LE MAY,
County Judge.

I certify that the foregoing is a true and correct copy of the notice published by the County Court of Lafayette County in the matter therein described.

Witness my hand and the seal of this court this 18th day of January, 1918.

[SEAL.]

J. E. SEARCY,
As County Clerk of Lafayette County, Arkansas.

Endorsed: Road Improvement District. Order. Made Jan. 18th, 1918. J. E. Searcy, County Clerk, Lafayette Co. Recorded in Road District Book 1 Page 574.

(Copy of Notice of Order to Show Cause In re Formation of Road District and Proof of Publication.)

— Is hereby given that there has been filed in this Court a petition signed by N. D. Harrell, H. A. McCants and others purporting to be a majority in land value, acreage or number of land owners within a proposed road district embracing the following territory:

All of sections 31, 32 and right bank of Doreheat Bayou, all of sections 33, all in township 15 south range 22 west, right bank of Doreheat Bayou, all of sections 5, 6, 7, 8, 18, 19, 30, 31, all in township 16 south range 22 west; all of sections 31, 32, 33, 34, 35, 36 all in township 15 south range 23 west, lying west of Doreheat Bayou. All of sections 31, 32, 33, 34, 35, 36 all in township 15 south range 24 west. All of township 16 south range 24 west. Left bank of Red River all of sections 32, 33, 34, 35, 36 all in township 15 south range 25 west. Left Bank of Red River all of sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36 all in township 16 south range 25 west.

Including all lots and blocks and all other real property in or surrounding the towns of Buckner, Stamps, Lewisville and Joella or any other towns lying within the above described territory.

And praying the improvement of certain public road from Columbia County line running east and west through Lafayette County to a point on the east bank of Red River opposite Garland City.

And that a preliminary survey and estimates have been made by the State Highway Department as required by law, and filed in this court before said petition was circulated and there was also filed with said petition good bond, conditioned as required by law.

Now, Therefore, all persons, firms or corporations owning land or other real property in the proposed district are hereby notified to appear before the County Court on the 16th day of February, 1918, at the hour of 10 A. M. to show cause for or against the establishment of said road improvement district.

T. P. LE MAY,

County Judge.

I hereby certify that the foregoing is a true and correct copy of the notice published by the County Court of Lafayette County in the matter therein described.

Witness my hand and seal of this court this the 18th day of January, 1918.

J. E. SEARCY,

County Clerk of Lafayette County, Arkansas.

Proof of Publication.

STATE OF ARKANSAS,
Lafayette County:

I, G. H. Dis-mukes do solemnly swear that I am editor of the Lewisville Herald, a weekly newspaper circulated in Lafayette County, Arkansas, and which has a bona fide circulation in said County; that said paper is the official organ of the said county; and that the advertisement hereto attached has been published in said Lewisville Herald once a week for 3 consecutive weeks in the regular weekly issues dated Jan. 24, 31, Feb. 7.

Given and sworn to this 16th day of Feb. 1918.

G. H. DISMUKES.

Sworn to and subscribed before me this 16 day of Feb. 1918.
 [SEAL.] A. T. STEWART,
 N. P.

My commission expires Feby. 21, 1921.

Endorsed: Filed this Feb. 16, 1918. J. E. Searcy, Clerk, by J. C. Searcy, Deputy.

(Notice of the Hearing of Exceptions to Assessments of Benefits Made by the Assessors of Road Improvement District No. 2, etc., and Proof of Publication.)

Notice is hereby given that the Board of Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, has filed the assessments of benefits made against the several and particular tracts of land, railroads and other real property in said District as made by the assessors for said district and that the following lands, railroads and other real estate are affected.

All of sections 31, 32 and right bank of Dorchest, all of section 33 all in township 15 south range 22 west; right bank of Dorchest Bayou, all of sections 5, 6, 7, 8, 18, 19, 30, 31 all in township 16 south range 22 west; all of sections 31, 32, 33, 34, 35, 36 all in township 15 south range 23 west; all of township 16 south range 23 west, lying west of Dorchest Bayou. All of sections 31, 32, 33, 34, 35, 36, all in township 15 south range 24 west. All of township 16 south range 24 west. Left Bank of Red River, all of sections 32, 33, 34, 35, 36, all in township 15 south range 35 west. Left bank of Red River all of sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36, all in township 16 south range 25 west.

Including all lots and blocks and all other real property in or surrounding the towns of Buckner, Stamps, Lewisville and Joella, or any other towns lying within the above described territory.

19 Now therefore, all persons, firms or corporations owning land or other real property within the boundaries of said District are hereby warned and called upon to appear before this Court on June the 28th, 1918, for the purpose of having any error adjusted or any wrongful [gr-evious] assessment adjusted.

Given under my hand and seal as Clerk of the Lafayette County Court this 22nd day of May, 1918.

J. E. SEARCY,

Clerk of the County Court of Lafayette County, Arkansas.

Proof of Publication.

STATE OF ARKANSAS,
 County of Lafayette:

I, G. H. Distmukes do solemnly swear that I am editor of the Lewisville Herald, a weekly newspaper circulated in Lafayette County, Arkansas, and which has a bona fide circulation in said County, that said paper is the official organ of said County, and that the advertise-

ment hereto attached has been published in said Lewisville Herald for two consecutive weeks in the regular weekly issues, dated May 30, June 6, 1918. Given and sworn to this 14 day of June, 1918.

G. H. DISMUKES.

Sworn and subscribed to before me this 14 day of June, 1918.

A. T. STEWART.

[SEAL.]

A. T. STEWART.

N. P.

Com. Exp. 2-21-1921.

Endorsed: Filed June 17, 1918. J. E. Searcy, Clerk.

(Order Establishing Road Improvement District No. 2 of Lafayette County, Arkansas.)

In the Lafayette County Court.

In the Matter of ROAD IMPROVEMENT DISTRICT NUMBER 2 OF LAFAYETTE COUNTY, ARKANSAS.

This being the day heretofore fixed by this court for the hearing of the petition of N. D. Harrell, H. A. McCants and Henry Moore and others praying for the organization of the following described territory into a Road Improvement District under provisions of Act 338 of the General Assembly of the year of 1915:

All of Sections 31, 32 and right bank of Dorchest Bayou, all in section 33 all in township 15 south range 22 west, right bank of Dorchest Bayou, all of sections 5, 6, 7, 8, 18, 19, 30, 31, all in township 16 south range 22 west. All of sections 31, 32, [23], 34, 35, 36 all in township 15 south, range 23 west. All of township 16 south range 23 west, lying west of Dorchest Bayou. All of sections 31, 32, 33, 34, 35, 36 all in township 15 south range 24 west. All of township 16 south range 24 west. Left bank of Red River all of sections 32, 33, 34, 35, 36 all in township 15 south range 25 west; Left Bank of Red River all of Sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36, all in township 16 south range 25 west.

Including all lots and blocks and all other real property in or surrounding the towns of Buckner Stamps, Lewisville and Joella or any other towns lying within the above described territory.

And it appearing that after due and [lawful] petitions filed with the State Highway Department for preliminary surveys, specifications, etc., said State Highway Department prepared said preliminary plans, and they were duly filed in this court as required by law, before any petitions were circulated, and it further appearing that due notice of the time and place and purpose of this hearing was made for the time and in the manner prescribed by law, and was duly published as required by law and it further appearing that a petition

had been duly filed herein signed by a majority in acreage and numbers of the owners of real property within the said proposed district; and it further appearing that all persons who have any valid reason and desire to remove their names from petition have done so; and all persons who object to the formation of said district having been heard as well as those who favor its formation; and the court being sufficiently advised in the premises, it is found and declared that the petition aforesaid is signed by a majority in acreage and in numbers of land owners, within the proposed district, as shown by the assessment for the purpose of general taxation in force in this county at this time; and the court ascertains and declares that it is to the best interest of the county and for the land owners of said
 21 proposed district that the same be organized into a road improvement district under the terms of the act aforesaid for the purpose of improving a certain public road in said district described as follows:

Commencing at a point on the County Line between Lafayette County and Columbia County one-half mile north of the St. Louis S. W. Railroad, running thence in a westerly direction to the town of Buckner; thence south about one-fourth of a mile; thence west to the incorporation line of the town of Stamps; thence in a north-westerly direction for a distance of about two miles; thence in a south-westerly direction to the town of Lewisville, thence on west on north side of railroad for about two miles; thence across said railroad in a south-westerly direction to Spirit Lake; thence in a northerly direction across railroad at Moor's Spur; thence west on north side of railroad to road crossing at Joella, thence across railroad; thence west on south side of Railroad to Red River. The above being continuous throughout its entire length.

It is therefore considered, ordered and adjudged that the territory heretofore described be established as road improvement district under the terms of said Act 338 and that said improvement district shall be and exist under the name and style of Road Improvement District Number Two of Lafayette County, Arkansas, and shall be a body politic and corporate under said name as provided in said act. It is further considered, and ordered that H. A. McCants, J. M. Hudgens and J. D. Hanson, who are owners of property in said district and men of business ability be appointed as commissioners thereof.

Recorded in Road District Book 1 page 575.

(Oath of Commissioners.)

We, H. A. McCants, J. M. Hudgens and J. D. Hanson do solemnly swear that we will support the Constitution of the United States and of the State of Arkansas, and that we will faithfully discharge the duties of the office of Commissioners of Road District No. 2 of Lafayette County, Arkansas, upon which we, each of us, are now severally about to enter; and we also swear that we will not be
 22 directly or indirectly, interested in any contract made by the Board of Commissioners of Road District No. 2 of Lafayette County, Arkansas.

Signed this 16th day of February, 1918.

H. A. McCANTS.
J. M. HUDGENS.
J. D. HANSON.

Subscribed and sworn to before me this Feby. 16th, 1918.
[SEAL.] J. E. SEARCY, Clerk.

Endorsed: Filed this Feby. 16th, 1918. J. E. Searcy, Clerk.

(Minutes of the Meeting of the Board of Commissioners of Road Improvement District No. 2, February 16, 1918.)

February 16, 1918.

Upon this the 16th day of February, 1918, the undersigned heretofore appointed this day by the County Court of Lafayette County, Arkansas, as a Board of Commissioners of Road District No. 2 of Lafayette County, Arkansas, having heretofore taken the oath of office prescribed by law as such commissioners met and organized by electing H. A. McCants, President, J. D. Hanson, Vice President, and J. M. Hudgens Secretary of said Board of Commissioners.

The Board adopted a circular seal for the District having thereon printed in the interior the words "Corporate Seal" and on the exterior of the seal "Road District No. 2 of Lafayette County, Ark."

The Board elected Henry Moore, Jr., as the attorney for said District and C. S. Christian the Engineer for same, and fixed their salaries as follows:

Engineer at five per centum of cost of work. Attorney's salary to be fixed later by Commissioners, Lewisville chosen as domicile of Board of Commissioners.

A preliminary survey had been heretofore made by the State Highway Engineer of the State of Arkansas, and there have been heretofore filed in the County Clerk's Office, as required by Section 1 (b) of Act No. 338, enacted by the General Assembly of the State of Arkansas during the year 1915, complete plans, specifications and estimates made in accordance with said section 1 (b) of said

Act, and the Engineer's report in full and complete and may be used to the advantage of the District and they adopt the same in whole as showing the kind and character of road to be built and the location of said road, and the Commissioners hereby report to the County Court the adoption of such preliminary survey, plans, specifications and estimates as made by the Engineer of the said State Highway Commission of the State of Arkansas.

H. A. McCANTS,
J. M. HUDGENS,
J. D. HANSON,

*Commissioners of Road District No. 2 of
Lafayette County, Arkansas.*

Endorsed: Filed this Feby. 16th, 1918. J. E. Searcy, Clerk.

(Resolution of the Board of Commissioners of Road Improvement District No. 2, March 1918.)

At a meeting of the Commissioners of Road Improvement District No. 2 County of Lafayette held at Lewisville on the — day of March, 1918, in said County, the following Resolution was unanimously adopted:

Whereas, Road Improvement District No. 2 of Lafayette County, has been duly established by the County Court of said County, and;

Whereas, it is the duty of the County Court under the laws of the State of Arkansas to add ten per cent of the cost of the District for [unfor-seen] contingencies; and,

Whereas, said Road Improvement District No. 2 of Lafayette County, has applied to the State Highway Department and through the said department to the Federal Government for State and Federal Aid on said Road Improvement District, and;

Whereas, said State of Arkansas and Federal Government require some provisions for the maintenance of said road.

Therefore, Be it resolved, by the Commissioners of said Road Improvement District No. 2 of Lafayette County, that they do hereby pledge themselves to use all the revenue derived from any source whatever in the excess of the amount needed to pay the bonds, interest and cost toward maintaining said road in an improved condition until the said road is accepted by the County Court as a part of the highway of the County.

H. A. McCANTS,
J. M. HUDGENS,
J. D. HANSON.

3-19-1918.

[SEAL.]

Endorsed: Filed March 19th, 1918. J. E. Searcy, Clerk.

(Petition of R. L. Berry for the Elimination of His Lands from Road District No. 2.)

Comes R. L. Berry and represents to this Honorable Court that he is the owner of the following described lands lying and situate in the County of Lafayette and State of Arkansas, to-wit: The south half of the northeast quarter of section 34 township 16 south range 24 west, containing 80 acres of land, more or less.

That said lands are included in the petition signed and filed in this court by N. D. Harrell, H. A. McCants, et al, praying for the creation and establishment of a Road District and Improvement District and the improvement of a certain public road from Columbia County Line running East and West through Lafayette County, Arkansas, to a point on the East Bank of Red River, opposite Garland City, Arkansas.

That the creation of said proposed road district and the improvements and roads intended to be constructed or improved by reason of the creation of said district will not benefit the lands above described belonging to this petitioner, because the roads intended or proposed to be built, constructed or improved are at least three miles from said lands above described.

Wherefore petitioner prays this Honorable court in the order creating said district to eliminate his lands from the boundaries of said proposed Road District or improvement districts and other proper relief.

R. L. BERRY.

STATE OF ARKANSAS,

County of Lafayette:

I, R. L. Berry, do solemnly swear that I am the petitioner in the above named petition and that the statements contained in said petition are true.

R. L. BERRY.

25 Subscribed and sworn to before me on this the 16th day of February, 1918.

[SEAL.]

A. H. HAMITER.

Notary Public.

My commission expires Jan. 2nd, 1921.

Endorsed: Filed this Feby. 11th, 1918. J. E. Searey, Clerk.

Petition denied 2-16-1918.

T. P. LE MAY,

Judge.

(Notice of Order to Show Cause In re Formation of Road District.)

Is hereby given that there has been filed in this Court a petition signed by N. D. Harrell, H. A. McCants and others, purporting to be a majority in value acreage or numbers of land owners within a proposed road district embracing the following territory:

All of section 31, 32 and right bank of Dorcheat Bayou, all of section 33 all in township 15 south range 22 west right bank of Dorcheat Bayou, all of sections 5, 6, 7, 8, 18, 19, 30, 31 all in township 16 south range 22 west. All of sections 31, 32, 33, 34, 35, 36, all in township 15 south range 23 west, all of township 16 south range 23 west, lying west of Dorcheat Bayou. All of sections 31, 32, 33, 34, 35, 36 all in township 15 south range 24 west. Left Bank of Red River all of sections 32, 33, 34, 35, 36 all in township 15 south range 25 west. Left Bank of Red River, all of sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36, all in township 16 south range 25 west.

Including all lots and blocks and all other real property in or surrounding the towns of Buckner, Stamps, Lewisville and Joella or any other towns lying within the above described territory.

And praying the improvement of certain public roads [form] Columbia County Line running east and west through Lafayette County to a point on the east bank of Red River opposite Garland City.

And that a preliminary survey and estimates have been made by the State Highway Department, as required by law and filed in the Court before said petition was circulated; and that there was also filed with said petitions good bond, conditioned as required by law.

26 Now, Therefore, all persons, firms or corporations owning lands or other real property in the proposed district are hereby notified to appear before the County Court on the 16th day of February, 1918, at the hour of 10 A. M. to show cause for or against the establishment of said road improvement district.

T. P. LE MAY,

County Judge.

I certify that the foregoing is a true and correct copy of the notice published by the County Court of Lafayette County in the matter therein described.

Witness my hand and seal of this court this the 18th day of January, 1918.

J. E. SEARCY,

As County Clerk of Lafayette County, Arkansas.

(Petition of Mrs. Kate Ford et al. for Elimination of Lands from Road District No. 2.)

Petition of Mrs. Kate Ford, Frank, Mack and Julia Ford and Fannie Olive for the elimination of their lands from said District.

Comes Mrs. Kate Ford, Frank Ford, Mack Ford, Julia Ford and Fannie Olive and represents to this Honorable Court that the first named petitioner is the widow of M. H. Ford, Deceased and that she has a homestead and dower right in and to the lands hereinafter described and that the last four mentioned petitioners are the only children and only heirs at law of the said M. H. Ford, deceased and own undivided interests in and to the following described lands, lying and situate in the County of Lafayette and State of Arkansas, to-wit:

Pt. S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Sec. 26 (32a), S. pt. S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Sec. 26 (24a), N. E. S. W. $\frac{1}{4}$ Sec. 26 (40a), S. E. $\frac{1}{4}$ of S. E. Sec. 27 (40a) N. E. of N. E. Sec. 34 (40a) N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of Sec. 35 (80a) Township Sixteen (16) south Range twenty-four (24) West, containing 256 acres of land, more or less.

The said lands are included in the petition signed and filed in this court by N. D. Harrell, H. A. McCants and others praying for the creation and establishment of a Road Improvement District and

the improvement of a certain public road from Columbia County line, running east and west through Lafayette County, Arkansas, to a point on the east bank of Red River opposite Garland City, Arkansas.

27 That the creation of said proposed road district and the improvement of the roads intended to be constructed or improved by reason of the creation of said district will not benefit the lands above mentioned belonging to these petitioners because the roads intended or proposed to be built, constructed or improved are at least $2\frac{1}{2}$ miles to three miles from said lands above described.

Wherefore, petitioners pray this Honorable Court in the order creating said district to eliminate said lands from the boundaries of said proposed Road District or Improvement District and all other proper relief.

KATE S. FORD,
MACK FORD,
JULIA FORD,
FANNIE FORD,
Petitioners.

STATE OF ARKANSAS,
County of Lafayette:

We, Mrs. Kate Ford, Frank Ford, Mack Ford, Julia Ford and Fannie Ford do solemnly swear that we are the petitioners in the above and foregoing [petitioners] and that the statements contained in the above and foregoing petition are true.

KATE S. FORD.
MACK FORD.
JULIA FORD.
FANNIE FORD.

Subscribed and sworn to before me on this the 16th day of February, 1918.

[SEAL.]

A. H. HAMITER,
Notary Public.

My commission expires January 2d, 1921.

Endorsed: Filed this Feb. 16, 1918. J. E. Searcy, clerk, by J. C. Searcy, deputy.

Petition denied 2-16-18.

T. P. LE MAY,
Judge.

28 (*Petition of Mrs. M. S. Featherstone for the Elimination of
Lands from Road District No. 2.*)

In the County Court of Lafayette County, Arkansas, January Term,
1918.

Before Hon. T. P. Le May, Judge.

In the Matter of the Creation of Road Improvement District of
Lafayette County, Arkansas.

Petition of Mrs. M. S. Featherstone for the Elimination of Her
Lands from said District.

Comes Mrs. M. S. Featherstone and represents to this Honorable Court that she is the owner of the following described lands lying and situate in the County of Lafayette and State of Arkansas, to-wit:

The south half of the northeast quarter and the southeast quarter of the northwest quarter of Sec. 35 in township sixteen south range twenty-four (24) west, containing 120 acres of land, more or less.

That said lands are included in the petition signed and filed in this court by N. D. Harrel, H. A. McCants and others praying for the creation of a Road Improvement District and the improvement of a certain public road from Columbia County Line running east and west through Lafayette County, Arkansas, to a point on the east bank of Red River, opposite Garland City, Arkansas.

That the creation of said proposed Road District and the improvements and the roads intended to be constructed or improved by reason of the creation of said District will not benefit the lands above described belonging to this petitioner because the roads intended or proposed to be built, constructed or improved are at least three and one half miles from said lands.

Wherefore petitioner prays this Honorable Court in the order creating said district to eliminate her said lands from the boundaries of said proposed Road Improvement District and all other proper relief.

MRS. M. S. FEATHERSTONE,
Petitioner.

STATE OF ARKANSAS,
County of Lafayette:

I, Mrs. M. S. Featherstone, do solemnly swear that I am the petitioner in the above and foregoing petition and that the statements contained in the above and foregoing petition are
29 true.

M. S. FEATHERSTONE.

Subscribed and sworn to before me on this the 14th day of February, 1918.

[SEAL.]

A. H. HAMITER,
Notary Public.

My commission expires January 2nd, 1921.

Endorsed: Filed this February 16, 1918. J. E. Searcy, clerk,
by J. C. Searcy, deputy.

Petition Denied 2-16-1918.

T. P. LE MAY,
Judge.

*(Petition of C. C. Hall for the Elimination of Lands from Road
District No. 2.)*

In the County Court of Lafayette County, Arkansas, January Term,
1918.

In the Matter of Creation of Road Improvement District in
Lafayette County, Arkansas.

Petition of C. C. Hall for the Elimination of His Lands from said
District.

Comes C. C. Hall and represents to this Honorable Court that he
is the owner of the following described lands lying and situate in
the County of Lafayette and State of Arkansas, to wit:

The southeast quarter of section thirty-five (35) township sixteen
(16) south range twenty-four (24) west, containing 160 acres,
more or less.

That said lands are included in the petition signed and filed in
this court by N. D. Harrell and H. A. McCants and others praying
for the creation of a road improvement district and the improve-
ment of a certain public road from Columbia County line running
east and west through Lafayette County, Arkansas, to a point on
the east bank of Red River, opposite Garland City, Arkansas.

That the creation of said proposed district and the improvements
and the roads intended to be constructed or improved by reason of
the creation of said district will not benefit the lands above described
belonging to this petitioner because the roads intended or
proposed to be built, constructed or improved are at least
four miles from said lands.

Wherefore petitioner prays this Honorable Court in the order
creating said district eliminate his said lands from the boundaries
of said proposed Road Improvement District and all other proper
relief.

C. C. HALL.

STATE OF ARKANSAS,
County of Lafayette:

I, C. C. Hall, do solemnly swear that I am the petitioner in the above named petition and that the statements contained in said petition are true.

C. C. HALL

Subscribed and sworn to before me on this 13th day of February, 1918.

[SEAL.]

A. H. HAMITER,
Notary Public.

My commission expires January 2nd, 1921.

Endorsed: Filed this Feb. 16, 1918. J. E. Searcy, clerk.

Petition denied 2-16-1918.

T. P. LE MAY,
Judge.

(Order Denying Petitions of Mrs. M. S. Featherstone et al. for Elimination of Their Lands from Road District No. 2.)

On this the 16th day of February, there was filed the following petitions requesting that the land set forth in said petition be eliminated in said Road Districts, to wit: Mrs. M. L. Featherstone, C. C. Hall, and Kate Ford, et al. and R. L. Berry.

After evidence was introduced on behalf of the petitioners and after argument of counsel on behalf of petitioners and on behalf of Road Districts the court being fully informed as to the law and the facts in reference to said petitions is of the opinion that the lands of the petitioners as set forth in the same will be benefitted by the building of the said road and that such lands should not be eliminated from Road Improvement District No. 2.

It is therefore considered, ordered and adjudged that the request of the petitioners for the elimination of their lands from said road district be denied and said lands shall be and remain as as part of said Road District.

Recorded in Road District Book 1 page 575.

31 (Order Approving Bond of C. S. Christian as Engineer for Road Improvement District No. 2.)

On this day there was presented to the County Court the bond of C. S. Christian, as Engineer for Road Improvement District No. 2 of Lafayette County, Arkansas, same being in the sum of One Thousand (\$1,000.00) Dollars and it appearing that said bond is signed as surety by the United States Fidelity & Guaranty Company, a solvent Bonding Company doing business within the State

of Arkansas, it is by the Court ordered that said bond of C. S. Christian as Engineer for said Road Improvement District No. 2 of Lafayette County, Arkansas, be and the same is hereby approved.

T. P. LE MAY,
Judge.

Recorded in Road District Book 1 page 577.

(Contract Between the Board of Commissioners of Road District No. 2 and C. S. Christian, February 13, 1918.)

This contract made and entered into this 16th day of February, 1918, by and between the Board of Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, hereinafter termed first party and C. S. Christian hereinafter termed second party, witnesseth:

First party employs second party to do all of its engineering work connected with the improvements to be made by first party including the following: The preparation of all preliminary plans necessary as a supplement to the preliminary plans furnished by the Highway Department and final plans, and the supervision of all construction work, second party to pay all the expenses of draftsmen, assistant engineers and other help of whatever kind or character needed in doing the complete engineering work of first party, and to give first party all of their time necessary to prosecute said engineering work without delay; and to pay all expenses of doing same, including all travelling expenses or expense of stationery, office rent and every other expense. Second party agrees to do the work herein described, for the compensation hereinafter set forth, and agrees to the condition in this contract.

The compensation of second party shall be an amount equal to five (5%) per cent of the actual construction cost of all the improvements made by first party, not exceeding in cost \$1,000,000.00 and four (4%) — on all such costs in excess of \$1,000,000.00 to be paid as follows.

Two per centum of the entire fee to be paid when the construction contract is let, or if more than one construction contract is let, the proportionate part of said two per centum represented by the contract that is let. The balance of said compensation is to be paid in installments by first party to second party at the same time and in the same proportions that cash on estimate is paid to the contractor of representative contractors. If for any reason the letting of contracts is delayed beyond 90 days from this date, the first party shall make arrangements to secure funds and pay second party the costs that they have been put to for the preliminary plans made to that time, including compensation to second party at the rate of \$150.00 a month to the time of such settlement. The first party agrees to pay said compensation as herein set forth.

In addition to the foregoing agreements, and for the consideration aforesaid, second party agrees to perform the following:

First. To make or cause to be made at their own expense all laboratory tests of material used or intended to be used on the work according to the practice of good engineering or as required from time to time by the State Highway Department or the Commissioners of first party.

Second. A copy of the estimates furnished by the engineers to the contractor shall be furnished to the State Highway Department from time to time.

Third. The State Highway Department is to be advised by second party of the time of the letting of any contracts for construction work.

Fourth. Copies of all contracts made for construction work shall be supplied by second party and filed with the State Highway Department.

Fifth. Second party to furnish the State Highway Department with such information as it desires about the progress or the work or plans therefor, on request from the Highway Department.

Sixth. If, in the making of any surveys or preparations of any plan, whether preliminary or final, it is found in the opinion of second party, that they can advantageously use any previous
33 surveys or plans made for any road work in the District of first party, and in the custody of the State Highway Department, then second party shall pay to first party or give it credit for the value of such plans, in the engineering work undertaken by second party herein, such value to be fixed by the Highway Department.

Seventh. This contract shall not take effect until second party has furnished first party with a good bond in the sum of \$1,000.00 with sureties to be approved by the first party and the State Highway Department, conditioned that second party shall well and truly discharge the duties of their employment herein described and carry out all the obligations of this contract, and promptly repay to first party any advance or over-payment that may be made to second party.

Eighth. All plans and engineering work shall be done by the second party in accordance with the regulations prescribed by the Federal Government or by the State Highway Department in order that the party of the first part may be entitled to all contributions of road aid funds that may be available from the United States and from the State of Arkansas.

Ninth. In all instances where required by law or order of the Commissioners, the plans or any detail thereof prepared by second party shall be submitted to the State Highway Department for their approval.

Tenth. If, because of the second party's instructions, permission or neglect at any time it shall appear that the work or improvement is not being carried out according to the plans and specifications, the State Highway Department shall have the right to terminate this contract; and in that event, the compensation of the second party shall be the amount earned by them up to the time of the termination of the contract to be calculated on the basis of the actual disbursements made by the second party, plus \$50.00 per month for the actual time they have been engaged in the work, unless it appears that because of the second party's instructions, permission or neglect the district has been damaged, in which event the damage occasioned to the district shall be an offset to the compensation of the second party as set out in this paragraph.

Eleventh. The party of the first part agrees that in the event work herein contemplated is not completed within the time limit as prescribed by the contract to be entered into between the Board of Commissioners and the Contractor or Contractors, whether the delay is caused by the Commissioners or by the Contractor, the party of the first part will pay to the party of the second part, the sum of \$10.00 per day for each day after the expiration of the time that the contract is to be fulfilled by the contractor. The said sum shall be in addition to the amounts as prescribed in the previous section of this contract.

Twelfth. This contract is made in pursuance to a regulation of the State Highway Department, which regulation is authorized by Act 105 of the Acts of 1917.

Witness our hands this 16th day of February, 1918.

BOARD OF COMMISSIONERS OF
ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE
COUNTY, ARKANSAS,

Party of the First Part,

By H. A. McCANTS,
J. M. HUDGENS,
J. D. HANSON,
C. S. CHRISTIAN,

Party of the Second Part,

By C. S. CHRISTIAN.

Approved:

WM. B. OWEN,

Chairman Highway Commission.

Endorsed: Filed this March 13th, 1918. J. E. Searcy, Clerk.

(Order Approving Selection of C. S. Christian as Engineer.)

Now on this day, being an adjourned day of the January term of the Lafayette County Court, the report of the Commissioners of Road

Improvement District No. 2 of Lafayette County, coming on to be heard.

And it appearing, that it is necessary and advisable to employ some other competent engineer other than the State Highway Engineer for the purpose of acting as engineer for said District and it further appearing that one C. S. Christian a competent engineer has been selected by said Board of Commissioners to act as such engineer, and has filed his bond in the sum of One Thousand Dollars, conditioned as required by law, and said bond appearing to be in all respects good and sufficient.

35 Wherefore, it is by the court considered, ordered, adjudged and decreed that the selection of said C. S. Christian as such engineer be and the same is hereby in all things approved and confirmed and that the bond of said engineer filed with said report of Commissioners be and the same is hereby in all things approved by the Court. This March 19th, 1918.

Recorded in Road Record 1 Page 579.

Order Approving Report of the Engineers and Accepting Plans, Specifications, and Estimates Now on File as the Plans, Specifications, and Estimates of Road Improvement District No. 2.

Now on this day, being an adjourned term of the January, 1918, term of the Lafayette County Court, the report of the Commissioners for Road Improvement District No. 2 of Lafayette County, Arkansas, transmitting the report of the Engineer having heretofore been filed and coming on to be heard, and it appearing that said Board of Commissioners have adopted the preliminary report heretofore made by the State Highway Engineer of the State of Arkansas and heretofore filed in the County Clerk's office, as required by law, and the Commissioner having found after due investigation that said Engineer's report is full and complete and may be used to the advantage of the District, and having adopted said report and plans and specifications in full and showing the kind and character of road to be built and the location of said road this Court, upon consideration of said rereport and the plans, specifications and estimates of said Engineer's report and the recommendation of the Board of Commissioners, finds that said report should be approved and same is hereby decreed by the Court. It is therefore ordered, adjudged and decreed by the Court that said engineer's report be and is hereby approved by the Court, this 19th day of March, 1918.

Recorded in Road Record Book 1 page 578.

(Order, March 5, 1918, Directing the Assessment of Benefits.)

On this 5th day of March, 1918, being the first regular special or adjourned term of the County Court of Lafayette County, Arkansas, held since the appointment of the Board of Commissioners for Road Improvement District No. 2 of Lafayette County, Arkansas, the

County Court does hereby (in accordance with Section 9 of Act 338 passed by the Legislature of the State of Arkansas during the Session of 1915, being the Act under which Road Improvement Districts have been formed) appoint three owners of real property within the County of Lafayette who shall constitute the Board of Assessors for Road Improvement District No. 2 of Lafayette County, Arkansas, the said land owners appointed being J. B. Bourland, of Buckner, Jim Stewart of Stamps and C. H. Barham of Lewisville, and the said Board of assessors are hereby ordered and directed to proceed to assess the benefits accruing to the lands embraced within Road Improvement District No. 2 of Lafayette County, Arkansas, from the building of the road through said District in accordance with the plans and specifications now on file in the County Clerk's office; and said Board of assessors are directed and ordered to do and perform all acts and things meet and proper in accordance with the requirements of said Act 338 passed by the Legislature of Arkansas during the year 1915 authorizing the formation of said Road Improvement Districts.

In witness whereof, I have hereunto set my hand as Judge of the County Court of Lafayette County, Arkansas, in open Court this 5th day of March, 1918.

[SEAL.]

T. P. LE MAY,
County Judge.

Attest:

J. E. SEARCY,
County Clerk.

Endorsed: Filed this March 5th, 1918. J. E. Searcy, Clerk. In the Road Improvement District No. 2 of Lafayette County.

Order of County Court Pledging the Maintenance of Highway.

Whereas, the Commissioners of Road Improvement District No. 2 of Lafayette County have made a showing to the County Court of Lafayette County that said Road Improvement District No. 2 has been organized under the laws of the State of Arkansas, for the purpose of improving the roads in said District; and

Whereas, a further showing is made to this Court that the Commissioners have applied to the State Highway Department and through said department to the Federal Government for both State and Federal Aid on said road, and

Whereas, it appears to the Court that the Federal Government requires that some provisions be made for the maintenance of said road after same is completed; and,

Whereas, it appears to the Court that the Commissioners have passed a resolution to the effect that they will use all the money derived from all sources, in excess of the cost of said district for the purpose of maintaining said road, and the Court being well and sufficiently advised does hereby pledge in good faith for and on behalf of the County the following:

That when said road is accepted by the County as part of the general highway of said County, the Court pledges itself to maintain said road in a state of good repair either out of the general revenue of said County or out of the three mill road tax now authorized by law.

Recorded in Road District Book 1 Page 578.

(Order for Use of Necessary Part of Three-mill Tax for Maintenance of Highway.)

Whereas, Road Improvement District No. 2 of Lafayette County, Arkansas, has been created by order of the County Court; and,

Whereas, said Road Improvement District, through its Commissioners has made application to the State Highway — for State and Federal aid and for the purpose of completing said improvement contemplated by said District; and,

Whereas, the Constitution of the State of Arkansas, provided that the County Court shall have exclusive original jurisdiction in all matters relating to Roads; and,

Whereas, Section 9, Act 105 of the Acts of 1917 provides that no State or Federal aid shall be given to any Road Improvement unless the Commissioners of said District levy a sufficient yearly tax to properly maintain the road or roads constructed by said District, or, unless the County Court sets aside Three-mill Tax or a sufficient amount thereof to properly maintain such road or roads to the satisfaction of State Highway Commission; and,

Whereas, the State Highway Commission has requested that this Section of the State Law be complied with; and

Whereas, it is the intention of the Commissioners of said District to complete said improvement as soon as practicable and to turn the same back to the County upon its completion which will be accepted by this Court when completed as a part of the County Highway System.

38 And the Court being well and sufficiently advised as to all matters of law and fact, does of its own motion hereby order and decree that the Three-mill Tax now authorized by law derived from the property located within the boundaries of said District be set aside and held for the purpose of maintaining said Road as described in said Improvement District.

And it is further ordered and adjudged that so much of said Three-mill Tax as is necessary will be spent for the proper maintenance of said road and to the entire satisfaction of the State Highway Commission.

Recorded in Road District Book 1 Page 578.

(Order of President of Board of Commissioners Directing the Assessors to Assess Benefits.)

To the Board of Assessors for Road Improvement District No. 2 of Lafayette County, Arkansas:

You are hereby instructed and directed to assess the benefits to several and particular tracts of land accruing and other real property, in Road Improvement District No. 2 of Lafayette County, Arkansas, in the assessment book in which appears a complete list of all lands in said district.

You are further instructed and directed to meet at the office of the County Clerk in the town of Lewisville Arkansas, on April 2nd, 1918, and continue on said work until it is completed.

When said work is completed you will certify the same and deliver it to the Board of Commissioners of said District.

In Witness Whereof, I have hereunto set my hand on this the 19th day of March, 1918.

H. A. McCANTS,
President of Board of Commissioners of Road District
No. 2 of Lafayette County, Arkansas.

Recorded in Road Record Book 1 Page 579.

(Order of Court Directing the Assessors to Assess Benefits.)

Whereas, the Court on March 5th, 1918, appointed a Board of Assessors for Road Improvement District No. 2 of Lafayette County, Arkansas, and

Whereas, the Board of Commissioners for said District have this day called upon this Court to enter an order directing the
39 assessors for said District to assess the benefits accruing to the several and particular tracts of land in said District.

And it further appearing to the Court that said assessors should meet and qualify within 30 days from this date and proceed with the work of assessment whenever called upon by the President of the Board of Commissioners for said District. And that said assessors have met and qualified as required by law.

Now, Therefore, said assessors are hereby directed and instructed to meet at a time and place to be fixed by the President of the Board of Commissioners for the purpose of making said assesment of benefits in accordance with law.

This March 19th, 1918.

Recorded in Road Record Book 1 Page 579.

IN the MATTER OF ROAD IMPROVEMENT DISTRICT NO. 2 OF LA-
FAYETTE COUNTY, ARKANSAS.

Oath of Assessors.

STATE OF ARKANSAS,
County of Lafayette:

We, the undersigned, J. D. Bourland, Jim Stewart, and C. H. Barham, comprising the Board of Assessors for Road Improvement District No. 2 of Lafayette County, Arkansas, having been duly appointed by the President of the Board of Commissioners to meet on this the 2nd day of April, 1918, do solemnly swear that we will support the Constitution of the United States and the Constitution of the State of Arkansas, and that we will well and truly assess the benefits to be received by each land owner by reason of the improvement as affecting the lands or other property in said District, so help me God.

Done at Lewisville, Arkansas, on this 19th day of March, 1918.

J. D. BOURLAND,
JIM STEWART,
C. H. BARHAM,

*Assessors of Road Improvement District No. 2 of
Lafayette County, Arkansas.*

40 Subscribed and sworn to before me this the 19th day of
March, 1918.
[SEAL.] J. E. SEARCY,
Circuit Clerk.

Recorded in Road Record Book 1 Page 579.

*(Order Setting the Exceptions to Assessment of Benefits for Hearing
on June 28, 1918.)*

On this 22nd day of May, 1918, being an adjourned day of the regular April, 1918, Term of this Court, the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, having presented to the Court the assessment of benefits as made by the Board of Assessors of said District and called upon the Court to fix a date for a hearing on the assessment of benefits made against the lands and other real property assessed by the assessors of said District and upon consideration of the same the court hereby designated June 28th, 1918, as a day for hearing all exceptions of persons firms or corporations to said assessment of benefits. And the Clerk of this Court is hereby ordered and directed to give notice of the filing of said assessment of benefits as required by Section 13 of Act No. 338 of the Acts of the General Assembly of the State of Arkansas, for the year 1915, and of the date set by the Court to

hear exceptions to said report of assessment of benefits. This May 22nd, 1918.

T. P. LE MAY,
County Judge.

Recorded in Book L1 584 County Court Records, Lafayette County, Arkansas. April Term Time.

J. E. SEARCY,
Clerk.

(Notice of the Hearing of Exceptions to Assessments of Benefits Made by the Assessors of Road Improvement District No. 2, etc.)

Notice is hereby given that the Board of Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, has filed the assessment of benefits made against the several and particular tracts of land, railroads and other real property in said District as made by the assessors for said District, and that the following lands, railroads and other real estate are affected, to-wit:

41 All of Sections 31, 32 and right bank of Dorcheat Bayou, all of sections 33 all in township 15 south range 22 west, right bank of Dorcheat Bayou, all of sections 5, 6, 7, 8, 18, 19, 30, 31, all in township 16 south range 22 west. All of sections 31, 32, 33, 34, 35, 36, all in township 15 south range 23 west; all of township 16 south range 23 west, lying west of Dorcheat Bayou. All of sections 31, 32, 33, 34, 35, 36 all in township 15 south range 24 west. All of township 16 south range 24 west. Left bank of Red River all of sections 32, 33, 34, 35, 36, all in township 15 south range 23 west. Left Bank of Red River all of sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36, all in township 16 south range 25 west.

Including all lots and Blocks and all other real property in or surrounding the towns of Buckner, Stamps, Lewisville, and Joella, or any other towns lying within the above described territory.

Now, Therefore, all persons, firms or corporations owning land or other real property within the boundaries of said District are hereby warned and called upon to appear before this Court on June the 28th, 1918, for the purpose of having any error adjusted or any wrongful or greivous assessment adjusted.

Given under my hand and seal as Clerk of the Lafayette County Court this, the 22 day of May, 1918.

J. E. SEARCY,
Clerk of the County Court of
Lafayette County, Arkansas.

Endorsed: Filed this May 22nd, 1918, J. E. Searcy, Clerk.

Order Approving and Confirming Assessment of Benefits.

Now on this day, an adjourned day of the regular April 1918, term of the Lafayette County Court, and the day heretofore fixed

and designated by the Court as a day to hear any and all complaints against assessments of benefits made against the several and particular tracts of land and other real property in said District by the Assessors for said District, come the Commissioners and Assessors for said District, in person and by their attorney, Henry Moore, Jr., and ask that said assessment of benefits be approved and confirmed by the Court;

And no person, firm or corporation having filed any objection to the benefits assessed or complained of said assessments
42 or either of same and it appearing to the Court that heretofore on the 22nd day of May, 1918, the Board of Commissioners for Road Improvement District No. 2 filed said assessment of benefits as made and certified to by the assessors for said District as required by law and that on the 22nd day of May, 1918, an adjourned day of the April term 1918, of this Court, this Court by proper order designated and fixed this day as a day for the hearing on the assessment of benefits made against the several particular tracts of land in said District.

And it further appearing to the Court that the Clerk of this Court has caused public notice to be published that said assessment of benefits had been filed in this Court and calling upon all persons, firms and corporations and incorporated interests to appear before this court for the purpose of having any error adjusted or any wrongful or grievous assessment corrected, and that said notice has been published for two consecutive insertions in "The Lewi-ville Herald" a weekly newspaper having a general bona fide weekly circulation in Lafayette County, Arkansas the second [inse-ction] of same having been published more than five days prior to this date as shown by the proof of publication filed herein on this date showing proof of publication of said notice for the time and in the manner required by law.

And said matter being presented to the Court upon the assessment of benefits so filed, the proof of publication filed herein, together with the other pleadings in said matter and the Court having fully considered said assessment of benefits and all matters relative thereon, finds that the lands and other real property in said District are greatly benefited by said improvement, and further finds that said assessments are justly and equitably made.

And the Court hereby approves said assessment of benefits made against the several and particular tracts of land in said District, and is of the opinion that said assessments of benefits is fair, just and equal to all land owners in said District and should be approved by the Court.

It is therefore considered, ordered and adjudged by the Court that said assessment of benefits made by the Assessors for said District be and the same is hereby approved and confirmed by this Court, and the Clerk of this Court is hereby directed and instructed to spread said assessment upon the records of this Court as a permanent roll for
said District.

43 It is further considered, ordered and adjudged by the Court that the assessment of benefits made against the St. Louis

Southwestern Railway Company and against the Louisiana & Arkansas Ry. Company as to the line of railroads of said respective companies in said District by the assessors for said District be approved and confirmed by the Court, and the Clerk of this Court is hereby instructed and directed to spread same upon the records as a permanent assessment roll for said District.

This 28th day of June, 1918.

T. P. LE MAY,
Judge.

Recorded in Road Record Book 1 Page 585.

(Estimate of the Proposed Highway Through Lafayette County Only.)

Lewisville, Arkansas, June 1st, 1918.

Board of Commissioners of Road Improvement District No. 2,
Lafayette County, Arkansas.

GENTLEMEN:

The following is the estimate of Road Improvement District No. 2 covering that portion of the proposed highway only in the County or 16.70 miles of the total 21.15 miles.

Clearing and grubbing 6.93A.....@	125.00	\$866.25
Excavating 43,838 Cy 20% waste 8,767..	.25	2,192.00
Embankment 69,885 Cy .....	.25	17,423.25
Overhaul 27,954 Cy .....	.03	838.62
16" vitrified clay pipe D. S. 92 lin ft.	2.00	184.00
18" " " " " 207 " "	2.20	455.40
24" " " " " 130 " "	2.90	377.00
Concrete, 1st class 533.69 Cy.	22.00	11,741.18
Pile trestles 165 lin. ft.	25.00	4,125.00
Steel in bridges, in place 21,939 lbs. ....	.11	2,413.29
Timber " " " 7,740 M.	65.00	503.10
Fence moving 69,028 lin. ft. ....	.01	690.28
Sodding 1,520 Sq. yds .....	.05	76.00
Guard Posts 80 posts .....	.50	40.00
Gravel, hauling 1st mile 13,695 tons ...	.80	10,956.00
Gravel, " 1½ miles 5,728 tons ...	1.00	5,728.00
Gravel, " 2 " 1,806 tons ...	1.20	2,167.20
Gravel, " 2½ " 1,050 " ...	1.40	1,470.00
Gravel, hauling 3 miles 1,050 tons ... @	1.60	1,680.00
Gravel, " 3½ " 1,050 " ...	1.80	1,890.00
4		
Gravel, " 4 " 1,050 " ...	2.00	2,100.00
Gravel cost at pit along H'way 25,429 tons	.10	2,542.00
Gravel hauled from Joella-S. L.		
Gravel hauling first mile 7,540 " .....	.80	6,032.00
Gravel " 1¼ " 1,050 " ...	1.00	1,050.00
Gravel " 2 " 1,050 " ...	1.20	1,260.00

Gravel, cost from Bearden	9,640	1.00	9,640.00
Removing buildings			240.00
Removing old bridges			200.00
Relaying pipe, 325 lin. ft.....		1.00	325.00
Grader work (\$5.00 per 100') 13.70....		264.00	4,408.80
			<hr/>
			93,615.27
Plus 10% Engineering, Atty's, etc.....			9,331.53
			<hr/>
Grand total			102,976.80
Alternate timber stringers and bent on concrete footing, instead of steel, for bridges:			
Timber, 12,496 M.....	@	65.00	\$812.24
Concrete in footing 21.00 Cy.....		22.00	462.00
			<hr/>
Total			\$1,274.24
Original estimate with steel in bridges...			93,615.27
Steel, to be deducted			2,413.29
			<hr/>
			91,201.98
Timber. Stringers, etc.....			1,274.24
			<hr/>
Estimate with timber instead of steel....			92,476.22
Plus 10% Engineering, Att'y etc.....			9,247.62
			<hr/>
Grand total			101,723.84
Average cost per mile \$6,091.00			

Your very truly,

C. S. CHRISTIAN,
Engineer,
 Per R. G. CAMPBELL.

45 *(Estimate of the Proposed Highway Through the Town of Buckner Only.)*

Estimate Through Town of Buckner.

Lewisville, Arkansas, June 1st, 1918.

Board of Commissioners of Road Improvement District No. 2, Lafayette County, Arkansas.

GENTLEMEN:

The following is the estimate of Road Improvement District covering that portion of the proposed highway only in the town of Buckner or 1.357 miles of the total 21.15 miles:

Clearing and grubbing .10.....@	125.00	12.50
Excavation 5,795 20% waste 1,159 Cy.....	.25	289.85
Overhaul 3,383 Cy.....	.03	101.49
18" vitrified clay pipe D. S. 87 lin. ft.....	2.20	191.40
24" " " " 5 lin. ft.....	2.90	14.50
Concrete, 1st class 83.44 Cy.....	22.00	1,835.68
Steel in bridges in place 5,222 lbs.....	.11	574.42
Timber " " " 1,978 M.....	65.00	128.57
Fence moving 5,840 lin. ft.....	.01	58.40
Sodding 275 sq. yds.....	.05	13.75
Gravel, hauling 1st mile 2,849 tons.....	.80	2,279.20
Gravel, cost at pit along H'way 2,849 tons....	.10	284.90
Grader work (\$5.00 per 100') 1,357 miles...	264.00	358.25
Removing bridges		15.00

8,272.16

Plus 10% Engineering, Att'y, etc..... 827.21

9,099.37

Alternate—timber stringers and bent on concrete footing, instead of steel for bridges:

Timber, 1,780 M @ 65.00.....	115.70
Concrete in footing, 3.00 Cy. at 22.00.....	66.00

181.70

Original estimate with steel in bridges.....	\$8,872.16
Steel to be deducted.....	574.42

Without steel	\$7,697.74
Timber stringers, etc.....	181.70

Estimate with timber instead of steel.....	7,879.44
Plus 10% engineering, Att'y, etc.....	787.94

Grand total 8,667.38

Average cost per mile, \$6,387.00.

46 Yours very truly,

C. S. CHRISTIAN,
Engineer,

Per R. G. CAMPBELL.

*(Estimate of the Proposed Highway Through the Town of Stamps
Only.)*

Estimate Through Town of Stamps.

Lewisville, Arkansas, June 1st, 1918.

Board of Commissioners of Road Improvement District No. 2, Lafayette County, Arkansas.

GENTLEMEN :

The following is the estimate of Road Improvement District No. 2 covering that portion of the proposed highway only in the town of Stamps or 1.619 miles of the total 21.15 miles:

Excavation 1,898 Cy. 20% waste..	380 Cy. @	.25	95.00
Embankment	3,622 Cy.	.25	905.00
Overhaul	1,449 Cy.	.03	43.47
16" vitrified clay pipe D. S.	24 lin. ft.	2.00	48.00
18" " " " "	24 lin. ft.	2.20	52.80
24" " " " "	15 lin. ft.	2.90	43.50
Concrete, 1st class	5,574 Cy.	22.00	1,226.28
Steel in bridges in place	5,222 lbs.	.11	574.42
Timber " " " "	1,978 M	65.00	128.57
Fence moving	1,570 lin. ft.	.01	15.70
Sodding	200 sq. yds.	.05	10.00
Gravel, hauling 1st mile	1,260 Cy.	.80	1,008.00
Gravel, hauling 1½ miles	1,682 Cy.	1.00	1,682.00
Gravel, " 2 "	457 " "	1.20	548.40
Gravel, cost at pit along h'way .....		.10	339.90
Removing buildings			30.00
Removing bridges and walk			150.00
Grader work (\$5.00 per 100') 1.619 miles ..	264.00		427.42
Total			7,328.96
Plus engineering, Att'y etc.			732.89
Grand total			8,061.85

Alternate—timber stringers and bent on concrete footing, instead of steel, for bridges:

Timber, 1,78 M @ 65.00	\$115.70
Concrete, 3.00 Cy. 22.00	66.00
	<hr/>
	181.70

47

Original estimate with steel in bridge.....	7,328.96
Steel to be deducted.....	574.42
Without steel	6,754.54
Timber stringers, etc.....	181.70
Estimate with timber instead of steel.....	6,936.24
Plus 10% engineering, Att'y, etc.....	693.62
Grand total	7,629.86

Average cost per mile \$4,713.00.

Yours very truly,

C. S. CHRISTIAN,
Engineer.

Per R. G. CAMPBELL.

Estimate of the Proposed Highway Through the Town of Lewisville Only.)

Estimate Through Town of Lewisville.

Lewisville, Arkansas, June 1st, 1918.

Board of Commissioners of Road Improvement District No. 2, Lafayette County, Arkansas.

GENTLEMEN :

The following is the estimate of Road Improvement District No. 2 covering that portion of the proposed highway only in the town of Lewisville or 1.472 miles of the total 21.15 miles :

Excavation 1,679 Cy. 20% waste..	336 Cy. @	.25	84.00
Embankment	3,073 Cy.	.25	768.20
Overhaul	1,229 "	.03	36.87
18" vitrified clay pipe D. S.....	24 lin. ft.	2.20	52.80
24" " " " "	15 lin. ft.	2.90	43.50
Concrete 1st class.....	88.68 Cy.	22.00	1,950.96
Steel in bridge, in place.....	8,464 lbs.	.11	931.04
Timber " " " "	2,312 M	65.00	150.28
Fence moving	1,680 lin. ft.	.01	16.80
Sodding	233 sq. yds.	.05	11.65
Gravel, 1st mile hauling.....	2,317 Cy.	.80	1,853.60
Gravel, 1½ " "	773 Cy.	1.00	773.00
Gravel, cost at pit along h'way...	3,090 Cy.	.10	309.00
Removing bridges			20.00

48

Grader work, (\$5.00 per 100)...	1,472 miles @	264.00	388.61
Relaying pipe	100 lin. ft. @	1.00	100.00

Total	7,490.31
Plus 10% Engineering Att'y etc.....	749.03

Grand total 8,239.34

Alternate—timber stringers and bent on concrete footing, instead of steel, for bridges:

Timber, 1.952 M @ 65.00.....	126.88
Concrete 3.00 Cy. @ 22.00.....	66.00
	<hr/> 192.88
Original estimate with steel in bridge.....	7,490.31
Steel to be educted.....	931.04
	<hr/> 6,550.27
Timber stringers, etc.....	192.88
	<hr/> 6,752.15
Estimate with timber instead of steel.....	6,752.15
Plus 10% Engineering, Att'y, etc.....	675.21
	<hr/> 7,427.36
Grand total	7,427.36

Average cost per mile \$5,046.00.

Yours very truly,

C. S. CHRISTIAN,
Engineer,

Per R. G. CAMPBELL.

Endorsed: Filed this June 27th, 1918. J. E. Searcy, Clerk.

(Petition for Removal of Cause to Federal Court.)

Your petitioner, the St. Louis Southwestern Railway Company states and shows respectfully to this Honorable Court that it is now and was at all times hereinafter mentioned, a railway corporation organized, incorporated and chartered under the laws of the State of Missouri, and is now and was at all times hereinafter mentioned a citizen and resident of the State of Missouri.

That Road Improvement District No. 2 of Lafayette County, Arkansas, is a body politic and corporate in the County of Lafayette, State of Arkansas, having been during the year 1918 formed and organized under the statute of said State of Arkansas known as the

49 Alexander Road Law, and, therefore, is a citizen and resident of Lafayette County, State of Arkansas, and was such citizen and resident of said County and State during all the times hereinafter mentioned and entitled to sue and be sued.

That Commissioners of said Road Improvement District were duly and regularly appointed and were duly qualified and entered on the discharge of their duties as prescribed by law, each one of whom are now and were during all the times hereinafter mentioned citizens and residents of the county of Lafayette, State of Arkansas.

That in proper time the Board of Assessors was duly and regularly appointed, qualified and entered on the discharge of their duties, each of whom are now and were at all the times hereinafter mentioned citizens and residents of Lafayette County, Arkansas.

That said Board of Assessors in proper time made their assessment of benefits against the real estate situated in said Road District, and in the attempted performance of and discharge of their duties, they made and returned an assessment of benefits against the real estate, buildings and road bed of your petitioner, as follows:

Its main line 16.94 miles at \$2,000.00 per mile.

Its side tract 9.21 miles at \$1,000.00 per mile.

The line of its Shreveport Branch, 3.50 miles at \$1,500.00, per mile.

Against its buildings in the town of Stamps and Lewisville 15% of the valuation assessed against the same for general taxation for county and State purposes, the said assessed valuation being \$8,440.00.

That it is contemplated by the Commissioners of said Road Improvement District of Lafayette County, Arkansas, and the County Court, that taxes shall be levied against such benefits so assessed at the rate of 4 per centum per annum for the next twenty years—which amounts to a tax against the property of your petitioner in the sum of One Thousand Nine Hundred Eighty Eight & 24/100 Dollars per year, or a total of Forty Nine Thousand Seven Hundred and Sixty Four & 80/100 Dollars.

That as provided by the statute under which said Road District was formed, notice has been published to the effect that the assessment of benefits against the real property of said District has been made and filed by said Board of Assessors and the 28th day of June, 1918, is by said notice appointed as the day when all persons — may feel aggrieved at the assessment of benefits, may appear in the County Court of Lafayette County, Arkansas, and make objections and file exceptions or other pleadings thereto.

Your petitioner feels aggrieved at the assessment of benefits so made and attempted to be made against its property in that it is not benefited in any sum, or if in any sum, a very small amount, not to exceed the total sum of \$500.00 by the making of the improvement contemplated in the formation of said District, which is the building of a public road and maintaining the same from the Westerly line of Columbia County, Arkansas, westerly [paralleling] the railroad line of your petitioner to Red River.

Your petitioner states that the market value of its road bed and buildings is not increased nor will be increased one cent by the building and maintenance of said road.

That this controversy is a suit of a civil nature in the County Court of Lafayette County, Arkansas—which is a court of competent judicial authority, duties and functions and that the amount in controversy exceeds the sum of \$3,000.00 exclusive of interest and costs.

That the filing of the original petition for the formation of said Road District, the appointment of the Commissioners, the appointment of the Board of Assessors, the making of said assessment of benefits, and the filing of same, all occurred at different times during the present year 1918. At all of which dates the said Road District, said Commissioners and the said Board of Assessors were all citizens and residents of the State of Arkansas, and still are such

citizens and residents and that the said Lafayette County, Arkansas is in the Texarkana Division of the Western District of Arkansas.

Your petitioner herewith offers its bond, with good and sufficient sureties, for its entering into said United States District Court within thirty days from the date of the filing of this petition, a certified copy of the records of said suit and for paying all costs that may be awarded by the District Court, if such suit shall hold such case was wrongfully and improperly removed thereto, and also for its appearing and entering special bail in such suit, if such bail was originally requisite.

51 Your petitioner has given notice to the adverse party in writing of the filing of this petition and bond, prior to the date of its filing.

Your petitioner, therefore, prays this Honorable Court to proceed no further herein, except to make order removing this cause, as required by law, and to accept the said sureties and bond, and to cause the said record herein to be removed to the said District Court of the United States for the Western District of Arkansas, Texarkana Division, for this it will ever pray, etc.

Respectfully submitted,

ST. LOUIS SOUTHWESTERN
RAILWAY CO.,
By GAUGHAN & SIFFORD,
Attorneys.

STATE OF ARKANSAS,

County of Ouachita:

J. T. Sifford deposes and says:

I am one of the Attorneys for the petitioner named in the foregoing petition. That said petitioner is a corporation its chief officers being absent from the State of Arkansas. That the statements made in the foregoing petition are true.

J. T. SIFFORD

Subscribed to before me this — day of June, 1918.

Notary Public.

Endorsed: Filed this June 27th, 1918. J. E. Searcy, Clerk.

(Bond on Removal.)

Know all men by these presents:

That the St. Louis Southwestern Railway Company a corporation organized under the laws of the State of Missouri, as principal and the United States Fidelity and Guaranty Company, a corporation organized for the purpose of making bonds and acting as surety and authorized to do business in the State of Arkansas, as surety, are holden and stand firmly bound unto the Road Improvement District

No. 2 of Lafayette County, Arkansas, in the penal sum of One Thousand Dollars, for the payment whereof well and truly to be made unto the said Road Improvement District No. 2 of Lafayette County, Arkansas, we bind ourselves, our heirs, representatives and assigns, jointly and severally, firmly by these presents.

Upon conditions, nevertheless, that

Whereas, the St. Louis Southwestern Railway Company has petitioned the County Court of Lafayette County, Arkansas, held in and for said County, for the removal of a certain cause therein pending, wherein the petitioner is protesting against the assessment of benefits made against its property by the Board of Assessors in behalf of the Road Improvement District No. 2 of Lafayette County, Arkansas, to the District Court of the United States in and for the Western District of Arkansas, Texarkana Division.

Now, if the said St. Louis Southwestern Railway Company shall appear into the said District Court of the United States within thirty days of the filing of said petition for removal, a certified copy of the record in said suit and shall well and truly pay all costs that may be awarded by the said District Court if said court shall hold that said suit was wrongfully and improperly removed thereto, and shall so appear and enter special bail in said suit, if such special bail is originally requisite therein, then this obligation shall be void. Otherwise it shall remain in full force and virtue.

In witness whereof, the name of the said St. Louis Southwestern Railway Company is hereto signed and affixed and in witness whereof as surety, the United States Fidelity and Guaranty Company heretofore mentioned has hereunto set its name and seal on this 14th day of June, A. D. 1918.

ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY.

By GAUGHAN & SIFFORD, *Attorneys*.

THE UNITED STATES FIDELITY AND
GUARANTY COMPANY.

By DR. SNOW, *Attorney in Fact*.

Endorsed. Filed this June 27th, 1918. J. E. Searcy, Clerk.

(Assessment Record of Road Improvement District No. 2.)

Road Improvement District No. 2.

Assessment Record. Filed 5-22-18. J. E. Searcy, Clerk.

In the Lafayette County Court.

In the Matter of ROAD IMPROVEMENT DISTRICT NO. 2, LAFAYETTE
COUNTY, ARKANSAS.

We, C. H. Barham, Jim Stewart and J. D. Bourland having been appointed by the Lafayette County Court on March 5th, 1918, as assessors for Road Improvement District Number 2 of Lafayette

County, Arkansas, to assess the benefits to be received by the several and particular tracts of land, railroads and other real property within said road improvement district by reason of the construction of the road in said district and after taking the oath of office as prescribed by law for such assessors, report that we met in the office of the County Clerk in Lewisville, Arkansas, on April 2nd, 1918, as requested and directed by the President of the Board of Commissioners and we continued to meet from day to day each successive day except Sunday until and including May 14th, 1918, and we assessed the benefits we believe will accrue to the various tracts of land and railroads within said district by reason of the construction of the East & West road within said district.

Our assessment of benefits against the various several and particular tracts of land and railroads, within the district as set out on the following subjoined pages numbered from 1 to 149 inclusive in this book.

We believe that the assessment of benefits against the several and particular tracts of land and railroads and hereinafter set out on pages one to 149 inclusive of this book is fair, just and equitable to all owners of property assessed in the district and should be adopted as the assessment of benefits in said district.

C. H. BARRHAM,
JIM STEWART,
J. D. BOURLAND,

*Board of Assessors for Road Improvement District
No. 2 of Lafayette County, Arkansas.*

The above is to be found in assessment Roll Book R. I. D. 2 in office Circuit Clerk, Lafayette County, Arkansas.

54 *Assessment-roll Road Improvement District No. 2, Lafayette
County, Arkansas.*

(Here is set out the list of lands in the assessment record Book, showing description, acreage, present assessed value, assessed benefits per acre, assessed damages, total assessment to each tract of land as equalized by the County Court. Total Assessed Benefits, Per cent collectible each year and amount payable each year.) (I make no showing of above.)

Name of owner.	Part of section.
St. Louis Southwestern Ry. Co.	16.94 miles main line 921 miles sidings, buildings, Shreveport Branch 3.5 miles-main line.

Present assessed valuation.	Assessed benefits per mile.
28,500 pr. mi.	2,000.00
3,000 " "	1,000.00
8,440 " "	1,500.00
18,000 per mi.	

Total assessed benefits.	Per cent collectible each year
33,980	4
9,210	4
1,266	4
5,350	4
<hr/> 49,706	

Amount payable each year.

1,359.20
368.40
50.60
210.00

1,988.24

(Here is set out the assessment etc., of the Louisiana and Arkansas Ry. Co. of which I make no showing.)

5 *Report of Commissioners Transmitting Assessment of Benefits.*

To T. P. Le May, County Judge:

SIR:

We, the undersigned, Commissioners for Road Improvement District No. 2 of Lafayette County, Arkansas, transmit herewith the assessment of benefits as made by us, certified to be the assessment of Road Improvement District No. 2 of Lafayette County, Arkansas, on the 14th day of May, 1918.

We ask that same be filed and that an order be made and entered by this Court directing that a date be fixed for a hearing on said assessment and the Clerk of this Court is directed to give notice thereof.

This 22nd day of May 1918.

H. A. McCANTS,
President;

J. M. HUDGENS,
Secretary;

J. D. HANSON,

*Board of Commissioners of Road Improvement
District No. 2 of Lafayette County, Arkansas.*

Filed 22nd day of May, 1918.

J. E. SEARCY,
Clerk.

Report of Assessors.

To the Board of Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas:

In compliance with the order of the Lafayette County Court and your instructions of March 19, 1918, relative to the assessment of the benefits in Road Improvement District No. 2 of Lafayette County, Arkansas.

We, the undersigned, heretofore duly appointed by the Lafayette County Court as assessors for said Road Improvement District beg leave to report as follows, to-wit:

We met at the office of the County Clerk in the town of Lewisville, Lafayette County, Arkansas, on the 2nd day of April, 1918, having taken the oath of assessors prior to said time and proceeded to assess the benefits against the several and particular tracts of land in Road Improvement District No. 2 and transmit said assessment of benefits here with you.

We believe said assessment of benefits as hereinafter set out is fair, just and equal to all land owners in said district and should
56 be adopted as the assessment of benefits in said district.

In witness whereof, we hereunto set our hands this the 14th day of May, 1918.

C. H. BARHAM,
JIM STEWART,
J. D. BOURLAND,

*Board of Assessors for Road Improvement District
No. 2 of Lafayette County, Arkansas.*

Filed 22nd day of May, 1918.

J. E. SEARCY,
Clerk.

Certificate of Assessors.

STATE OF ARKANSAS,
County of Lafayette:

We, the undersigned, C. H. Barham, Jim Stewart and J. D. Bourland the Board of Assessors of Road Improvement District Number 2 of Lafayette County, Arkansas, do hereby certify that the foregoing pages numbered 1 to 149 inclusive of this book is the assessment of benefits made by us against the several and particular tracts of land and ra-roads in Road Improvement District Number 2 of Lafayette County, Arkansas, in compliance with the instructions of the Commissioners of said District and according to law.

In witness whereof we hereunto set our hands on this the 14th day of May, 1918.

C. H. BARHAM,
JIM STEWART,
J. D. BOURLAND,

*Board of Assessors of Road Improvement District
No. 2 of Lafayette County, Arkansas.*

Filed this 22nd day of May, 1918.

J. E. SEARCY,
Clerk.

(Clerk's Certificate to Transcript from State Court.)

STATE OF ARKANSAS,
Lafayette County, ss:

I, J. E. Searcy, Circuit Clerk in and for above named County and State, do hereby certify that the within and foregoing pages numbered from 1 to 83 inclusive are true and correct copies of the originals thereof as same appear on file and of record in my office, in re the matter of Creation of Road Improvement District No. 2 of Lafayette County, Arkansas.

In witness whereof, I have hereunto set my hand and affixed my seal on this 15th day of July, 1918.

J. E. SEARCY,
Circuit Clerk, Lafayette Co., Ark.

Motion to Remand to Lafayette County Court.

Filed in U. S. District Court November 7, 1918.

In re Matter of ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE
COUNTY, ARKANSAS.

Assessment of Benefits Against the St. Louis Southwestern Rail-
way Co.

Comes the Board of Commissioners of Road Improvement District Number Two of Lafayette County, Arkansas, and moves this Honorable Court to remand the cause now pending, to the County Court of Lafayette County, Arkansas, for the reason that this Court is without jurisdiction to try the matter at controversy, in that the proceeding before the County Court is an administrative proceeding and therefore not cognizable by the Federal Court; and the proceedings of this special assessment do not constitute a suit within the meaning of the Federal Judiciary laws, but the County Court is authorized under so-called "Alexander Act" (The Road Improvement District Act of the State of Arkansas) to act as a Board of Review in adjusting the amounts of benefits placed by the Assessors against various lands, town lots and railroad tracts within the Road Improvement District; and in so acting exercise the powers of Board of Review, or assessor, and does not exercise the powers of a court granted to County Courts under the Constitution and laws of the State of Arkansas.

Wherefore, This Honorable Court — without jurisdiction to hear the issues now pending, and there being as yet no suit within the meaning of the Federal Removal Act, it is prayed that this matter be remanded to the County Court of Lafayette County, Arkansas.

BOARD OF COMMISSIONERS OF
ROAD IMPROVEMENT DIS-
TRICT NO. 2 OF LAFAYETTE
COUNTY, ARKANSAS.

By Its Attorneys, MOORE, BURFORD & MOORE.
By MOORE, BURFORD & MOORE.

58 (*Order of Submission of Motion to Remand, November 12, 1918.*)

This day comes on this cause to be heard on the motion to remand of the Board of Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, said Board of Commissioners appearing by Moore, Burford and Moore, their attorneys, and St. Louis. Southwestern Railway Company appearing by Messrs. Gaughan & Sifford its attorneys, which said motion is argued by counsel and submitted.

(Order, February 12, 1919, Overruling Motion to Remand.)

The motion to remand of Improvement District No. 2 of Lafayette County, Arkansas, heretofore submitted, having been duly considered, the court now being well and sufficiently advised in the premises, doth overrule said motion.

To the action of the court in overruling said motion to remand, the said Road Improvement District No. 2 of Lafayette County, Arkansas, duly excepted at the time.

Demurrer of Improvement District to Exceptions of St. Louis Southwestern Railway Company.

Filed in U. S. District Court May 6, 1919.

Comes the Board of Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, and demurs to the Specific Exceptions of the St. Louis Southwestern Railway Company:

1.

Because the specific exceptions of the St. Louis Southwestern Railway Company do not state facts sufficient to constitute a defense to the assessment of benefits levied against their property on behalf of Road Improvement District No. 2 of Lafayette County, Arkansas.

2.

Because no facts are pleaded which show that the assessment of benefits made on behalf of Road Improvement District No. 2 of Lafayette County, Arkansas, are excessive and no facts are pleaded which overturn the prima facie fairness and equality of the assessment established and made by the Assessors; but the specific exceptions above mentioned consist merely of opinions and not of facts.

Wherefore the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, pray that this demurrer be sustained and the specific exceptions of the St. Louis Southwestern Railway Company be dismissed.

ROAD IMPROVEMENT DISTRICT NO.
2 OF LAFAYETTE COUNTY, AR-
KANSAS,

By MOORE, BURFORD & MOORE,
By HENRY MOORE, Jr.

Amended Exceptions of St. Louis Southwestern Railway Company.

Filed in U. S. District Court May 15, 1919.

Comes the St. Louis Southwestern Railway Company and files its amended exceptions to the assessment of benefits made by the As-

essor of Road Improvement District No. 2 of Lafayette County, Arkansas, against its roadbed and buildings, as follows, to wit:

1.

The railway company avers and states that the assessment of benefits as laid against its said property within said Road Improvement District is excessive and exorbitant, and greatly and substantially exceeds the benefits which will be received by its property within the district by reason of the construction of said improvement, and thereby unlawfully deprives the said railway company of its property without due process of law, in violation of the first section of the Fourteenth Amendment to the Constitution of the United States.

2.

That said assessment of benefits as laid against the property of the railway company within said Road Improvement District is arbitrary and discriminatory as compared with the assessments laid by said Board of Assessors upon other property within the Road Improvement District, and thereby unlawfully imposes a grossly unequal and disproportionate share of the cost of such improvement upon the said property of the railway company within the district, thereby depriving the said St. Louis Southwestern Railway Company of the equal protection of the laws, in violation of the first section of the Fourteenth Amendment to the Constitution of the United States.

60

3.

The railway company further states that the tax laid by said Assessors upon its property on its main line is at the rate of \$2,000.00 per mile, or \$166.66 per acre of property owned by the railway company, and that the assessment upon other property of the same nature and character, and located the same with reference to the road, which other property will receive substantially the same benefits by reason of the construction of said road, does not exceed \$4.00 per acre.

4.

The railway company further alleges and states that the said assessment of benefits against its property is discriminatory, arbitrary, and unreasonable, and deprives it of the equal protection of the law in contravention of the said Fourteenth Amendment to the Constitution of the United States, in this: That in assessing benefits to real property lying in all of said district except that lying within the towns of Lewisville, Stamps and Buckner, the Assessors disregarded all benefits flowing to the improvements located upon such real property, assessing the benefits which accrue to the naked land only, and disregarded entirely the value of such land in making such assessments; whereas, in assessing the property of the railway company

the district, the benefits are assessed against all improvements, such as buildings, structures, rails, ties, fastenings, and roadbed dump.

5.

That in making such assessment the Assessors have assessed the benefits which will flow to the franchise of the railway company, which is personal property and is not liable to assessment under the laws of the State of Arkansas.

6.

That the said assessment is arbitrary, discriminatory, and unreasonable, and deprives the railway company of the equal protection of the law in violation of said Fourteenth Amendment to the Constitution of the United States, in this: That whereas the benefits accruing to the personal property of the railway company is assessed, those which accrue to other personal property within the district are not assessed.

7.

The railway company further states that all of its property located within said Road Improvement District is an integral part of an interstate transportation business, and all of the same is used constantly in the transportation of interstate commerce. That said assessment of benefits unlawfully burdens such interstate commerce by imposing upon the revenues accruing therefrom an unlawful, unjust, and discriminatory tax, in violation of Section 6, Article 1 of the Constitution of the United States, which provides that Congress shall have power to regulate commerce between the states.

8.

The railway company further states to the court that the maximum benefit which its property will receive by reason of the construction of said improvement is \$3,009.21 and that to the extent that the aforesaid assessment of \$49,700.00 exceeds said sum of \$3,009.21, the same is unreasonable, arbitrary and will deprive the said railway company of its property without due process of law, in violation of the said Fourteenth Amendment to the Constitution of the United States.

That if the property of the railway company lying within said district had been assessed at the same rate as other property of a similar nature, kind, and value lying within the district and located similarly with reference to the road, the said assessment upon its property would have been \$3,009.21, and to the extent that the assessment of \$49,700.00 as aforesaid exceeds the said amount of \$3,009.21 the same is arbitrary, discriminatory, and unreasonable, causing the railway company to pay a grossly unequal and disproportionate part of the tax, thereby denying the railway company the

equal protection of the law, in violation of said Fourteenth Amendment of the Constitution of the United States.

Wherefore, the St. Louis Southwestern Railway Company prays that the aforesaid assessment may be reviewed by this court and reduced to the said sum of \$3,009.21.

ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY,

By ———,
Attorneys.

(Record Entry May 15, 1919, of the Repropounding of Demurrer of Improvement District to Amended Exceptions of the St. Louis Southwestern Railway Company.)

This day comes Road Improvement District No. 2 of Lafayette County, Arkansas, by Henry Moore, Jr., its attorney, and
62 comes St. Louis, Southwestern Railway Company, by [Messrs.] Gaughan & Sifford, its attorneys, and said Railway Company files its amended exceptions to the assessment of benefits in the above entitled cause. On motion of said Improvement District its demurrer heretofore filed to the exceptions of the Railway Company is treated as repropounded to the amended exceptions this day filed.

Reply of Improvement District to Exceptions of St. Louis Southwestern Railway Company.

Filed in U. S. District Court May 16, 1919.

Comes the Commissioners of Road Improvement District No. 2, of Lafayette County, Arkansas, and for its reply to the exceptions of the St. L. S. W. Ry. Co., states:

I.

It denies that the property and railroad track of said Railroad Company will not be benefited by the construction of the road as contemplated.

II.

It admits that in a general way the road will parallel the track of said Railroad Company, though at places said road will be approximately two miles [distance] from the railroad track. Said road runs at right angles to the Shreveport Branch track. Said Commissioners deny that the building of said road will not in any way reduce the expenses of maintenance of the track of said Railroad but allege that from the Western limits of the town of Lewisville

said road will parallel said track for about two miles, that said Railroad at this point runs through a wet country and is badly in need of drainage, that the ditches dug in building the dirt road will drain the railroad track, and will be of direct benefit to the railroad track in the sum of several thousands of dollars, that about 20 years ago the Railroad Company dug ditches to drain the track at the place above referred to, but such ditches have become filled and choked with earth, and the drainage water will now be diverted from the railroad track by the road ditches above referred to.

III.

The building and maintenance of said road will add to the market price value of the railroad track and buildings of said railroad. Said Commissioners deny that the building of said road will decrease the value of said road. Undoubtedly [æ] certain traffic, both of passengers and freight, will be carried over the contemplated improvement that would have gone by railroad if said gravel road should not be built, but the greater increase in traffic due to the building of said road will cause the railroad to receive a very large increase in traffic after making allowance for that moving by wagon or automobile, and the construction of said road will add very greatly to the business of the Railroad Company.

IV.

That part of the railroad track within the limits of the road district if severed from the remainder of said track would be of very little value to the Railroad Company or any other person, but a railroad must be considered as a unit or whole, and the benefit to said Railroad Company from the building of the road will be very great, adding to the market value thereof, and increasing the traffic over same.

V.

In the towns within the Road Improvement District the assessed value of the lands for County and State purposes has been taken as a basis and a benefit of fifteen per cent thereof levied for road purposes. The assessment of the buildings of the defendant Railroad Company has been made by the duly designated authorities of the State of Arkansas, and such assessment of such buildings being real estate has been placed on the assessment books of Lafayette County, and adopted [at] the assessment for County and State purposes, and the same percentage of benefits has been levied against buildings as against other lands and buildings in said towns. The railroad buildings have been assessed according to their real value, no estimate whatever having been taken of the value of the franchise of the Railroad Company in making such assessments, and in fact it would be impossible to estimate the value of such franchise in making an assessment of the depot buildings in the towns of Lewisville, Stamps and Buckner.

VI.

Said Commissioners assert that the railroad owns a right-of-way over and across the lands now occupied by its track, and that no other person, firm or corporation has any rights in said land as long as same is occupied by the railroad, and used for railroad purposes, and any person desiring to use or go upon said right-of-way may only do so by permission of said Railroad Company, and under the laws of the State of Arkansas, said railroad right-of-way, and the track thereon is real estate, and subject to assessment for road purposes.

VII.

Said Commissioners deny that the taxation contemplated against the railroad property violates the Fourteenth Amendment of the Constitution of the United States.

VIII.

Said Commissioners state that the construction of said road will connect the City of Texarkana with the towns of Lewisville, and Magnolia, thus connecting the county seats of Miller, Lafayette, and Columbia Counties, and that said road will be of strategic and military value. That the authorities of the United States, and the Council of Defense of the Nation acting in behalf of this Government are enlisting the efforts and resources of all persons and all property in an endeavor to provide employment for the discharged soldiers and sailors who fought in behalf of our Nation in the recent war with Germany, and the United States Government is encouraging the building of roads as well as other enterprises that will furnish such employment. Therefore, the building of this road is of advantage to the security and general welfare of the Nation.

Wherefore, premises considered, said Commissioners pray that the assessment of the benefits made against the Railroad Company by the Board of Assessors be by this Court approved and confirmed, for its costs in this action expended and for all other proper and legal relief.

Respectfully submitted,

BOARD OF COMMISSIONERS OF
ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE
COUNTY, ARKANSAS,

By HENRY MOORE, JR.,

Attorney.

(Demurrer of the Improvement District Overruled; Jury Impaneled; Trial May 16, 1919.)

This day comes the Board of Directors of Road Improvement District No. 2 of Lafayette County, Arkansas, by Henry Moore, Jr., its attorney, and comes the St. Louis Southwestern Railway Company by T. J. Gaughan and J. R. Turney, its Attorneys, and
65 comes on to be heard the Demurrer of said Improvement District repropounded to the Amended Exceptions to assessment of benefits of said Railway Company. Said demurrer being argued by counsel and submitted, the Court being well and sufficiently advised in the premises, doth overrule the same. To the action of the court in overruling said demurrer the said Improvement District duly excepted at the time.

Thereupon the said Improvement District files its reply to the Amended Exceptions of said Railway Company.

And, now, the parties announcing ready for trial, come the following named persons as jurors, to-wit:

J. D. Gregory, W. A. Coleman, W. Jesse Paulk, Otto Hoffman, G. B. Williams, R. T. Huntly, J. H. McNees, Jim Matthews, J. A. Kelley, W. G. Newson, W. J. Hamington and Frank Speer.

Twelve good and qualified electors of the Western District of Arkansas, Texarkana Division, duly selected, empaneled and sworn to try the issues joined. Having heard the evidence adduced, at the hour of adjournment the further consideration of this cause is postponed until to-morrow morning 9 o'clock and the jury permitted to separate under the admonition of the Court until that hour.

(Trial May 17, 1919.)

This day come the parties thereto by their attorneys, and comes the jury heretofore impaneled and sworn herein, as on yesterday, and the trial of this cause proceeds. Having heard the further evidence adduced, at the hour of adjournment the further consideration of this cause is postponed until Monday morning, 9 o'clock May 19, 1919, and the jury permitted to separate under the admonition of the court until that hour.

(Judgment, May 19, 1919.)

No. 413, Law.

In the Matter of

ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY,
ARKANSAS,

against

ST. LOUIS SOUTHWESTERN RY. CO.

Assessment of Benefits.

66 This day came the parties hereto, by their attorneys, and comes the jury heretofore impaneled and sworn herein as on Saturday, and the trial of this cause proceeds; and upon the evidence of the witnesses, stipulation of the parties and argument of counsel, of its own motion the court withdraws the cause from the consideration of the jury, and thereupon the plaintiff Road Improvement District No. 2 of Lafayette County, Arkansas, asked the court to make the following findings of fact and declarations of law, which were in words and figures as follows:

No. 1. The Court finds that in arriving at the amount of benefits received by the lands in the country, the lands in the City and the railroad track, the assessors in their discretion might legally use the zoning system in assessing the benefits received by the land in the country, and might use a certain per centum of the assessed valuation for State and County purposes in arriving at the benefits received by the railroad track from the building of the road.

Each of such several benefits may be such sums as are found to be just, right and equitable considering the kind, character, and use of said three several species of property.

No. 2. That in determining the amount of benefits that will be received from the building of the road by the Railroad Company, there shall be taken into consideration the fact, if it be a fact, that freight will be brought into the railroad, and be shipped during the wet season of the year when traffic is light thus furnishing tonnage to the railroad at a time when it can be carried more cheaply than during the rush season when the railroad cannot furnish cars, labor, or equipment to handle the tonnage.

The fact, if it is a fact, that intensive farming will be encouraged by the improvement, and additional crops raised on the lands at present cleared, and crops raised of a character that will furnish a greater tonnage than at present, and tonnage that will carry a higher rate of freight than the tonnage now received by the Railroad Company.

The benefit to be received by the Railroad Company from the

drainage of its right of way, if the evidence shows that any benefit will be had from the better drainage furnished by the building of the road.

In addition there shall be taken into consideration the probably increase in traffic due to the settling up of the country, and the estimated growth in population that may be found will take place as the result of the improvement being made.

67 No. 3. That the amount of benefits that will accrue to lands within the district or the track of the defendant Railway Company is to a large extent incapable of exact estimation. In arriving at such benefits account must be taken of the estimated growth of population because of the building of the road, and the increase in traffic over the railroad that may be anticipated therefrom.

An estimate of benefits resulting from a local improvement to a certain piece of property is largely a matter of opinion, and generally there is a wide difference of opinion on such questions. Great deference is due to the judgment of the Board of Assessors who were constituted as a special tribunal for the purpose of determining the question of benefits to the land and railroad tracks within the confines of the Road Improvement District, and in reviewing the proceedings of said assessors the Court must not substitute its judgment for that of the assessors unless the evidence clearly shows that the assessments made are erroneous.

The court thereupon overruled the motion of plaintiff to make the above findings of fact and declarations of law; to which action of the court the plaintiff Road Improvement District No. 2 of Lafayette County, Arkansas, thereupon severally excepted and prayed that its exceptions be noted of record, which was accordingly done.

Thereupon the defendant St. Louis Southwestern Railway Company, moved the court to make declarations of law and findings of fact and figures as follows, to-wit:

Findings of Fact.

No. 1. The court finds from the evidence that the only benefits which will accrue to the property of the Railway Company located within the District by reason of the construction of the road, will be the enhancement in value of the naked land, exclusive of all improvements and that such enhancement in value will not be more than the enhancement in value of the naked land of adjoining or contiguous property similarly located with reference to the road or of the same general nature, character and value.

No. 2. The court further finds that the value of the steel rails, fastenings, ties, road bed dump of the Railway Company will not be enhanced by the construction of the road, and that such steel, rails, fastenings, ties, road bed dump, will receive no benefit from the construction of the road.

68 No. 3. The court further finds that the value of the naked land occupied by the railroad right of way within the corporate limits of the towns of Buckner, Stamps, and Lewisville, is \$22,705.31 Dollars.

Declarations of Law.

No. 1. The assessments of benefits against the railroad property lying within the corporate limits of the towns of Buckner, Stamps and Lewisville, should be at the rate of 15% of 40% of the actual physical value of the naked land of the Railway Company so situated.

The court thereupon overruled the motion of the defendant Railway Company to make the foregoing declarations of law and findings of fact, to which action of the court in so overruling its motion, the defendant St. Louis, Southwestern Railway Company, severally excepted and prayed that its exceptions be noted of record, which was accordingly done.

Thereupon the court declared the law to be as follows:

1. That the assessment of benefits against the property of the defendant Railway Company situated outside of the Corporate limits of the towns of Buckner, Stamps, Lewisville, should be the same as the assessment of benefits against the other property situated outside of said cities and towns and lying within the same zone with reference to the location of the improved road per unit of acre, and the parties thereupon agreed that when such property of the defendant lying without the cities and towns above named is so assessed, the benefits thereon will amount to \$885.48 in the aggregate, or \$54.00 per mile.

To the action of the court in making this declaration of law the plaintiff excepts upon the ground that in estimating the benefit to railroad track the assessors rightfully took into consideration the kind, character and use of the property on which same should be assessed in accordance with the use to which the property has been put, rather than the naked land value of same. To the ruling of said court in overruling said exceptions, the plaintiff Road Improvement District No. 2 of Lafayette County, Arkansas, excepted and said exceptions were noted of record.

2. The court further finds that the assessment of benefits against the property of the defendant Railway Company lying within the towns of Lewisville, Stamps and Buckner should be at the same percentage of the actual value of such property including the
69 land, steel rails, fastenings, buildings and structures, road bed dump and ties that the assessment of benefits against other property lying within such cities and towns bear to the actual value of such property; and the court finds that when the assessments against the property of the defendant company lying within such cities and towns are made upon this basis, such assessment of benefits aggregated the sum of \$9,600.00 or \$2,400.00 per mile of railroad.

To this second declaration of law the defendant St. Louis Southwestern Railway Company objects upon the ground that such declaration of law is erroneous in that it includes in such assessment of benefits the value of the buildings, steel rails and fastenings, ties and road bed dump of the Railway Company situated on said railroad right of way which, under the undisputed evidence in this case, will receive no benefit whatever from the construction of the road, thereby depriving the defendant Railway Company of its property without due process of law in contravention of the first section of the 14th amendment to the Constitution of the United States, and upon the further ground that in assessing benefits to all property lying without cities and towns no assessment of benefits was made against the value of improvements erected on such other property, thereby causing a grossly and unequal proportion of the cost of such improvement to be borne by the property of the defendant Railway Company, thereby depriving it of the equal protection of the law in contravention of the first section of the 14th amendment to the Constitution of the United States. The Defendant further objects to said declaration of law upon the ground that the assessment of benefits upon its property in accordance therewith substantially and grossly exceeds the benefits which will be [confer-ed] upon such property by the construction of the road, thereby depriving the defendant of its property without due process of law, in contravention of the said 14th amendment of the Constitution of the United States, and upon the further ground that the steel rails, fastenings, ties are personal property and is not subject to be assessed, for benefits accruing from the improvement and that benefits against no other personal property within the district are assessed, and that thereby a grossly and disproportionate part of the cost of constructing said improvement is placed upon the property of the defendant Railway Company, thereby depriving it of the equal protection of the law in contravention of the 14th amendment of the Constitution of the United States, which several objections of the defendant are by the court overruled, to which action of the court the
70 defendant Railway Company then and there excepted and asked that its exceptions be noted of record, which is accordingly done.

Plaintiff Road Improvement District No. 2 of Lafayette County, Arkansas, excepts to the ruling of the court in that in assessing benefits the character, kind and use of three classes of land, to-wit: country or agricultural land, urban lands and railroad track with appurtenances thereto, is not taken into consideration; that said three classes of property should be assessed for benefits on a separate and distinct basis taking into consideration the various and separate uses to which said three classes of property are put. The court took into consideration this difference in kind and use of the rural and urban properties but declined to take into consideration the character and kind and use to which said railroad property is put. To the ruling of said court in overruling said exception the plaintiff Road Improvement District No. 2 of Lafayette County, Arkansas, excepted and its exceptions were noted of record.

It is therefore considered ordered and adjudged that the assessment of benefits against all property owned by the defendant St. Louis, Southwestern Railway Company in Road Improvement District No. 2 of Lafayette County, Arkansas, as returned by the Board of Assessors in the aggregate sum of \$49,706.00 be and the same is hereby reduced to the sum of \$10,485.48, and that all costs of this proceeding be and they are hereby apportioned equally between the parties, Road Improvement District No. 2 Lafayette County, Arkansas, and defendant St. Louis Southwestern Railway Company.

The Clerk of this Court is further ordered and directed to certify a copy of this judgment to the County Court of Lafayette County, Arkansas. To which final order and judgment of the court the plaintiff Road Improvement District No. 2 of Lafayette County, Arkansas, at the time excepted, which said exceptions were overruled by the court and the objections of the plaintiff to such overruling of said exceptions were made a matter of record.

To the action of the court in making and entering the aforesaid order and judgment the defendant St. Louis, Southwest- Railway Company then and there excepted for the reasons as shown above, and prayed that its exceptions be noted of record which was accordingly done.

71 *(Order, May 19, 1919, Allowing Time to File Bill of Exceptions.*

On motion it is ordered by the court that the parties hereto be and are hereby allowed 90 days from this date in which to file Bill of Exceptions in the above entitled cause.

Joint Bill of Exceptions.

Filed in U. S. District Court June 25, 1919.

Before the Honorable Frank A. Youmans, Judge of the United States District Court for the Western District of Arkansas.

In the Matter of

ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY,
ARKANSAS,

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

Assessment of Benefits.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY, ARKANSAS, Plaintiff in Error,

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Defendant in Error.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff in Error,

vs.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY, ARKANSAS, Defendant in Error.

This cause coming on for trial on the 16th day of May, came Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, by its counsel and came St. Louis Southwestern Railway Company, by its counsel, and both having announced themselves ready for trial and the jury being requested by Commissioners of Road Improvement District No. 2 thereupon came a jury, to-wit: W. J. Paulk and eleven others, who were duly impaneled to try this cause.

And, thereupon, the parties to this cause, in order to sustain the issues upon their respective parts, introduced the following named witnesses, who, after being duly sworn, gave their testimony before the court and jury as follows, to-wit:

The St. Louis Southwestern Railway Company, to sustain the issues upon its part, offered the following testimony, to-wit:

J. E. BOURLAND, a witness on behalf of St. Louis Southwestern Railway Company, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gaughan:

Question. What is your age and where do you live?

Answer. Fifty years old; live at Buckner, Lafayette County.

- Q. How long have you lived there, Mr. Bourland?
- A. Thirty years.
- Q. What business are you engaged in?
- A. Farming and mercantile business, hardware business.
- Q. Did you ever have any railway experience?
- A. No, sir.
- Q. Never employed by any railway company in any capacity?
- A. No, sir.
- Q. What official position do you hold with reference to the Road Improvement District No. 2 of Lafayette County, Arkansas?
- A. I don't hold any position at all; I was once Assessor.
- Q. When did you cease to be Assessor?
- A. I reckon when we ceased to assess. I reckon when we completed our job. I have never heard any more about it.
- Q. Any way, you were appointed one of the assessors and served in that capacity?
- A. Yes, sir.
- Q. And you and two other gentlemen made the assessment that is involved in this case?
- A. Yes, sir.
- Q. Now, do you recall when it was you made this assessment?
- A. No, sir; I don't.
- Q. The assessment appears to have been signed up by you with the other two assessors on the 14th day of May, 1918.
- A. Somewheres about that.
- Q. Did you with the other two assessors assess all of the land or all the real estate within this road district?
- A. Yes, sir.
- Q. Do you recall about how many acres of land were involved in it?
- A. No, sir.
- Q. What is your recollection of the amount?
- A. I don't know that I have any recollection at all now about it.
- Q. Do you remember whether it was as much as 200,000 acres or not?
- A. I don't remember what it was; I don't know as we taken that up at that time; I don't remember whether we did or not.
- 73 Q. Do you remember how many days you three assessors were engaged in making this assessment?
- A. Well, no, sir, I don't; something like three days.
- Q. Where did you make the assessment?
- A. At Lewisville.
- Q. Did you go over the lands?
- A. No, sir.
- Q. At what place did you make the assessment at Lewisville?
- A. At the court house.
- Q. Who was present when the assessment was made?
- A. Mr. Barham and M. Stewart there, we three assessors.
- Q. Any one else present?
- A. I believe the County Clerk was there to get information from.
- Q. Had you gentlemen discussed the matter with the Commissioners before you made the assessments?

A. No, sir.

Q. Now, had you ever served in any capacity in connection with a road improvement district before?

A. Never did, no, sir.

Q. You never had lived in a road improvement district before?

A. No, sir; never did.

Q. Did you gentlemen receive any instructions from any one as to the basis upon which you should make your assessments?

A. Well, we talked it over and decided on it right there.

Q. I say, did you receive any instructions from any one?

A. I don't know as we did, only what would be our duty to do.

Q. The question I am trying to get you to answer is this: Did you receive any instructions, that is, did you advise with any one as to the basis upon which you should make the assessment?

A. Outside of ourselves?

Q. Yes.

A. No, sir; I don't think we did. W was right there in the court house and talked it over and made our decision right there.

Q. You had not had any meeting prior to that?

A. No, sir.

Q. Did you ever have any meeting after that?

A. When we met at county court after that.

Q. But you never changed the assessment after you had first made it, did you?

A. No, sir.

Q. Did you gentlemen advise any with the engineer about your assessment?

A. No, sir.

Q. Well, you didn't know then the amount that your assessment should be, did you, as a whole, not individually?

A. We figured it out.

Q. Did any one advise you about what the road would cost, how much the assessment would be?

A. Yes, sir; we had that information.

Q. Who did you get that from?

A. I think Mr. Moore brought the information over there.

Q. Do you remember that you received information as to what it was going to cost to build this road?

A. Yes, sir; we had that information, approximately.

Q. Do you remember what that amount was?

A. No, sir; I don't something like \$120,000.00, approximately that.

Q. The cost of the road?

A. Yes, sir.

Q. Now, did you receive any advice from any one with reference to the fact that your assessment would have to be in excess of the cost of the road?

A. Yes, sir.

Q. And you started in then to make the assessment with the idea that your assessment must exceed the estimated cost of the road?

A. Yes, sir.

Q. Now, then, you started out with the idea that you would see that all of the land embraced within this road district should be assessed at some amount so that it would yield a certain sum of money?

A. Yes, sir.

Q. Now, how did you assess the lands that were in the district outside of incorporated towns?

A. You mean what rate we give them?

Q. Yes, sir; what rate.

A. The first zone, \$4.00; the second zone \$3.00, and the third \$2.00.

Q. How many zones did you have?

A. Three.

Q. Were there not a few lands that were in the fourth zone?

A. Well, I think there was one place in the county four miles from the road.

Q. What did you assess that at?

A. \$1.00.

Q. Now, then, you divided this district up into zones?

A. Considering that place, we did. I think it was just one place in the district.

Q. Now, what distance from the dirt road did you go in order to form your first zone?

A. One mile, the first mile.

Q. And how far did you go for the second zone?

A. The second mile was the second zone, and the third mile the third zone.

Q. And you assessed all land within these respective zones at \$4.00, \$3.00 and \$2.00 per acre? Is that correct?

75 A. Yes, sir.

Q. Now, in making that assessment, what consideration did you give, if any, to the value of the land or the improvements that were on the land?

A. To the value of the land?

Q. Yes.

A. Well, we just valued the land as I stated.

Q. No, you valued the benefit, and the question I am asking you is what consideration if any did you give to the value of the land, to the improvements that might be on it, if any?

A. Well, we didn't on farm lands.

Q. In other words, in making the assessment of the benefits against the lands outside of the towns, you disregarded the matter of the value?

A. Assessed it all alike.

Q. And also disregarded the matter of the value of improvements?

A. Yes, sir.

Q. Now, did you consider in assessing the benefits to the lands outside of the incorporated towns the amount of profit that a man would make on the land?

A. Well, yes, sir.

Q. What I mean by that is this: If a certain 160 acres of land—

the benefit to a certain 160 acres of land was to be assessed by you, did you look to see how much cotton it would produce or how much corn it would produce on account of the road?

A. No, we knew it would not produce any more; it would have been foolish to have done that.

Q. You say you knew it would not produce any more?

A. No, sir; it would not produce any more cotton or corn per acre.

Q. Did you not figure that many tracts of land that were tributary to this road would be cleared up?

A. Sure, there would be more made in the same section of the country, but not any more to the acre. That is what you asked me.

Q. No, the question I am asking you is this: Did you consider the increased production of any tract of land outside of the cities and towns in making your assessments?

A. You mean more land would be cleared up and produce more over the area?

Q. Yes.

A. I would consider that it enhanced the value of the property.

Q. In considering that did you figure that this particular piece of property would produce more, and that one would produce more, or did you assess it all alike?

A. You can readily see we assessed it all alike.

Q. In other words, you assessed the land that was not cleared the same amount?

A. Yes, sir.

Q. That you did an equal area of land that was already cleared?

A. Yes, sir.

Q. And in a high state of cultivation, did you not?

A. Yes, sir.

Q. Now, then, in assessing the benefits to this land you did not consider that the improvements on the land had been benefitted, did you?

A. Well, in a way, yes, sir. Take the thing as a whole it increased it all alike.

Q. If you considered the improvements on land had been benefitted, then why did you not assess the acreage that was improved more?

A. Well, we figured that the land would be cleared up later and would have the same improvements on it as the other.

Q. Take the case of two farms, 80 acres each, one had a good house on it and a good barn and the other had a very poor house and no barn at all. Now, you assessed them both exactly the same, didn't you?

A. Yes.

Q. Then, as a matter of fact, you didn't consider the improvements when you made the assessment?

A. Directly, we didn't.

Q. You didn't do it any way, did you?

A. Well, no, not in the assessment; really we couldn't. We talked of it. We made the assessment all alike. That was the answer to that to start with.

Q. Now, when you came to the four towns, I believe, how did you make the assessment?

A. We made that on the same—just like it shows there, on a 15 per cent basis.

Q. Of what?

A. Of the valuation. We didn't assess that by the acre like we did the other. Took the improvements into consideration.

Q. You mean by that that you took 15 per cent of the assessed value? Is that correct?

A. Yes, sir.

Q. Now, you made that assessment without looking at the property at all, but simply took the tax books and made the assessment from the tax books?

A. Yes, sir.

Q. Now, in making that assessment you didn't look to see what kind of business was being carried on on any lot that you assessed, did you?

A. No, sir; didn't take that into consideration; just what the property was assessed at, what it was worth.

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Q. And you didn't consider the question as to whether or not there was a bank in one building that was making large profits or whether there was a peanut stand in that building that was losing money, did you?

A. No.

Q. So the amount of profit that a man was making, or was going to make, on account of doing business on a certain one of these lots was not considered by you?

A. No, sir.

Q. Now, when you went to assess the St. Louis Southwestern Railway Company, we generally refer to it as the Cotton Belt Railway, how did you arrive at the assessment of \$2,000.00 per mile for the main line, \$1,000.00 per mile for the side track, and \$1,500.00 per mile for the branch known as the Shreveport branch?

A. According to the assessment on the tax books.

Q. You went to the assessment and took a certain per cent. of it?

A. Yes, sir.

Q. How did you get the assessment?

A. We made the assessment ourselves.

Q. The assessment of the railroad?

A. I couldn't tell you to save my life.

Q. You don't remember?

A. No.

Q. Did you all have the assessment of the railroad before you?

A. I don't know whether we did or not; I couldn't tell you that either.

Q. Do you remember what per cent of the assessment against the railroad you gentlemen took?

A. 10 per cent.

Q. Now, you figured that the 10 per cent assessment against the Cotton Belt railroad based upon 10 per cent of the assessment against

the Cotton Belt railroad was a fair assessment as compared to 15 per cent in the towns?

A. That is the way we considered it, yes, sir. We wanted to do justice by all as near as we could.

Q. Now, do you know what the railway company was assessed at per mile?

A. Do you mean the benefit?

Q. No, not the benefit.

A. \$28,000.00 and something.

Q. Do you remember what the side tracks were assessed at?

A. No, sir; I don't.

Q. Do you remember what the Shreveport branch was assessed at?

A. No, sir.

Q. All you remember about it is that you took the assessment that day?

A. Yes, sir.

Q. And you went through and took a certain per cent of it?

A. Yes, sir.

Q. And you assessed the railroad property on that basis?

78 A. Yes, sir.

Q. Do you know who had made that assessment that you considered and had before you?

A. You mean the tax assessment per mile?

Q. Do you know whether it was made by the State Assessing Board?

A. I guess it was.

Q. Don't you know that it was?

A. No, sir; I don't pay any attention to that kind of business.

Q. You know there isn't anybody else to do it?

A. No, that is a fact.

Q. Now, you gentlemen didn't know how this State taxing board had arrived at that assessment, did you?

A. Well, the others might; I don't know as I did.

Q. You know you did not know?

A. Yes, sir.

Q. Whether they looked over it, you don't know, nor what decision they made, or what figures they used to arrive at it?

A. I never did study that part of it.

Q. Well, you know you had those figures there before you?

A. Yes, sir.

Q. And you know you assessed benefits against the railroad by taking a certain per cent of the assessment for taxing purposes?

A. Yes, sir.

Q. Now Mr. Bourland, do you know how many acres of land there are in a mile of railroad track? The railroad right-of-way is one hundred feet wide?

A. No, sir; I never have figured it.

Q. Well, it figures a little over twelve acres?

A. Yes, sir. I heard them say today but I didn't know. I had never figured it.

Q. Now then, when you got out in the country and you assessed other people's land right there adjoining the road on the basis of four dollars per acre and you disregarded all improvements on this land and disregarded the amount of earnings that the land would make and disregarded the value of this land. Why didn't you assess the railroad the same way?

A. Well, that land was worth the money.

Q. You can't farm on that land without these improvements and the railroad can't run unless you have the improvements on it?

A. You say you can't farm land without any improvements?

Q. Without any buildings on it. Don't it cost a good deal of money to clear and fence this land?

A. Yes, sir, it does now.

Q. Don't it add to the value of the land?

A. Yes, sir.

79 Q. If you assessed the land that was not cleared and was not fenced just like you assessed land that was cleared and made no difference in that respect, why did you make a difference with lands with respect to the railroad?

A. The railroad already had improvements on it. We cut that down in that proportion.

Q. These lands that were cleared and producing a bale of cotton to the acre, they also had improvements on it?

A. Yes, sir, but we wouldn't consider an improvement on it any more when the railroad owned it.

Q. But you didn't consider an improvement anywhere except in the town?

A. No, sir.

Q. The point I am trying to get at is this: I want to know why it was that you considered the improvements on the railroad land and considered the earnings or probable future earnings of the railroad when you did not consider it on other people's land?

A. We considered the railroad—I don't know just how we done that either.

The Court: I don't understand the witness to say that they considered future earnings with regard to the railroad?

Mr. Gaughan: No, he said they took a certain per cent of the State assessment.

Q. Let me ask you this question: In assessing the amount of benefit against the Cotton Belt Railroad per mile, did you consider that the building of this dirt road would increase the earnings of the railroad company?

A. Yes, sir.

Q. Did you take that into consideration in making your assessment?

A. Yes, sir, the same as we did the farm land and in towns.

Q. It would increase the value of all of it in proportion to what it would bring.

Q. Now in assessing the farm land, isn't this the way you assessed

it. That you decided that the building of this road would make that land worth four dollars an acre more than it was before?

A. Yes, sir.

Q. As a selling proposition?

A. Yes, sir.

Q. And you did that regardless of the fact whether it was earning anything at all, didn't you?

A. Yes, sir.

Q. Now in assessing the railroad you considered its earnings and what else?

so The Court: I don't understand the witness to say that they considered the earnings. I wanted you to bring out what he intended to say.

A. I meant to say it would increase the value of it the same as farm lands. Of course, it wouldn't increase if it didn't increase the business.

Q. You say it couldn't increase the business unless it increased the value?

A. It would make it worth more.

Q. Why would it be worth more?

A. I suppose like any other property. It would get more business probably.

Q. You think it increases its value because it increases its business?

A. Well, in settling up the country I would think it would.

Q. Did you consider anything else except that in making that assessment?

A. In what way?

Q. Was that the reason why you assessed the railroad two thousand dollars per mile because you thought it would increase its business?

A. We taken the railroad into consideration just like we did the farms and the towns. It would all be benefitted in proportion to its worth.

Q. I will ask you to tell me how you figured that the railroad would be benefitted?

A. It would get more benefit.

Q. Any other way except that?

A. I don't know as it would.

Q. Is that the only thing you considered?

A. In increasing the value of it?

Q. In making your assessment?

A. I don't know as I know just what you mean.

Q. Here is what I mean. I asked you why you thought the value of the railroad property would be increased and you said on account of its increased business?

A. Yes, sir.

Q. And then the question I am asking you is do you know of

any other reason except that why the value of the railroad property would increase?

A. No.

Q. Then the question I asked you was this: Did you consider any other element or fact?

A. I don't know as we did; we talked a good deal about it and we considered a good many things maybe that I wouldn't recall now.

Q. Now, Mr. Bourland, don't you think that the building of this road would increase the market value of every acre of land within a mile of that dirt road just like it would every other acre?

81 A. Why, yes, sir, I believe it will. I have never seen it tried out but I believe it will.

Q. Anyway that was your opinion?

A. Yes, sir.

Q. Isn't that the basis of your assessment against that land?

A. Yes, sir, we had to have some basis.

Q. Well, that was the basis?

A. Yes, sir.

Q. And was that the only basis?

A. Yes, sir.

Q. As a matter of fact, won't it increase the land of the railroad just like it increases the market value of the other land?

A. Not the land.

Q. Suppose you took the railroad off?

A. Couldn't use it for farm land at all.

Q. Why not?

A. It has a dump up there. It wouldn't be fit for farm use.

Q. Outside of the dump. The dump don't take up the whole hundred feet?

A. The pits and the dump would mighty near do it.

Q. Suppose after this road was built,—the dirt road was built, there was no railroad there and the railroad was to go in there and try to acquire its right of way from the farmer. If these lands had gone up four dollars an acre on account of this dirt road they would charge the railroad company just four dollars more for that right of way, wouldn't they?

A. Yes, sir, I would think so.

Q. Therefore that piece of land which is being used for the right of way is increased in market value just like other lands adjoining the dirt road?

A. The railroad is increased in value?

A. No, I am not supposing the railroad was on it.

A. I don't think it would; if you take the ties and rails off I don't think it would be worth anything.

Q. Supposing the dump was not there and just the land there it would be increased just like the other?

Mr. Moore: I purposely failed to assign any objection to a great deal of this testimony, and my objection now is not that I care about going into it, but it seems that this is absolutely immaterial, and that

If we allow everything to go in such as he is asking this witness, instead of being here two days we will be here two weeks, so I make this one now.

The Court: I don't know Mr. Moore about that. It is a new field. These questions are not ordinarily tried before a jury and it is perfectly plain that the witness was undertaking something new entirely. I think it is proper to find out just what his ideas were with regard to it, and what basis he had. I think there ought to be as wide a latitude extended in obtaining this information as is reasonable with a speedy disposition of this case, or as speedy as is possible. Under the circumstances I will ask counsel to limit their questions to bringing out the particular points that they have in view and waste as little time as possible. I will permit the question to be asked. I want to state to counsel that the Supreme Court of the United States, Mr. Justice Hughes who wrote the opinion in the Minnesota rate case, said that it was impossible to consider the land in question or not approximate to the railroad without the existence of the railroad because it was there and you couldn't deface it in any way. So I don't see how we are going to eliminate that fact of the existence of the railroad.

Q. Mr. Bourland, I believe you stated that you never had lived in road improvement district?

A. No, sir.

Q. Have you ever lived on an improved [grave] pike road?

A. No, sir.

Q. You never had any experience, have you, as to what effect the building of a gravel pike road along by the side of a railroad such as is done in this case, has had or would have upon the business of the road?

A. No, sir, I never have had any experience. I have heard other people talk about the effect it would have and read about it.

Q. You had no way of knowing just how much business the building of this road would give to the St. Louis Southwestern Railroad Company, nor whether that business would be profitable or not?

A. No, sir, no way of absolutely knowing only what I have heard other people say about other cases where they have these roads. That is the only way I had any idea at all.

Q. Well, the information you got from other people with reference to the effect of these roads applied particularly to the land in the community?

A. Yes, sir, and the settling up of the community; people want to go to a country with good roads; they would go there in preference to where they didn't have good roads.

Q. The good roads don't [creat-] any more people than there were before?

A. More come to it.

Q. If good roads are being built everywhere, then of course there would be no incentive to leave where you are? One place is just as good as the other?

A. Yes, sir.

Q. Have you got that road completed yet?

A. No, sir.

Cross-examination.

By Mr. Moore:

Q. I wish to refresh your memory on one or two things and see whether you meant to say what I understood you to say in testifying. Mr. Bourland, when you were appointed one of these assessors, were you not notified to meet with the Commissioners at Lewisville to receive your appointment?

A. Yes, sir.

Q. Did you not meet in Lewisville with the Commissioners and at that time was not the attorney for the Road Improvement District and the engineer Mr. C. L. Christian present?

A. I don't know about Mr. Christian. You were there.

Q. You don't remember about him?

A. No, sir.

Q. And they had you before Mr. Searey, County Clerk, to take the oath of office I believe?

A. Yes.

Q. In a general way did not the commissioners and the attorney, and I would have thought the engineer, but did not the commissioners and the attorney and the new assessors discuss what the duty of the assessors should be?

A. Yes, sir, that was discussed.

Q. After that time you met in Lewisville at the County Clerk's office with the other two assessors and made the assessments?

A. Yes, sir.

Q. Neither the Commissioners nor the attorneys were present at any time during the making of that assessment, were they?

A. No, sir; I think I said that, didn't I? We had the County Clerk. He didn't meet with us particularly, but we used him for information.

Q. Did either the attorney for the Road Improvement District or the Commissioners attempt to talk to you or tell you how much, or in what manner you should make that assessment?

A. No.

Q. Then that was the free assessment of you assessors?

A. Yes, sir.

84 Q. Please state whether or not any conference or conferences were had and any discussions between the assessors prior to the commencement of the assessment with reference to the plan to be used?

A. Not with me there wasn't.

Q. I mean between the three assessors?

A. As a body, no, sir.

Q. Then when you met, how did you proceed?

A. We begin to talk the matter over you know and begin to figure on it and see what it would make.

Q. Didn't you talk with each other and interchange ideas as to how that assessment was to be made?

A. Sure, that is what I said a while ago.

Q. In making that interchange of ideas did you take into consideration the character of the country as it then existed and what would be the effect on the country as a whole from the building of this road, that is, whether it would be improved, settled up and intensive farming put in? Did you take that into consideration?

A. We talked about that, yes, sir.

Q. Now you then decided to assess the lands at four dollars, three dollars and two dollars according to the zones you have stated?

A. Yes, sir.

Q. You did not consider, I understand you to say, whether the land was worth five dollars an acre, say, or forty dollars an acre in making that assessment?

A. No, sir.

Q. Just why is it that you counted two forty acre tracts situated similarly to the road would receive the same benefit regardless of their value?

A. It would receive the same enhancement of value is the way we figured that; I suppose it would be benefitted alike in the future.

Q. Did you count the wild land would actually become cleared land?

A. Yes, sir; would be settled up and be worth more money.

Q. When you reached the towns you did not count the land there by the acre, did you?

A. No, sir.

Q. Would it have been possible to have assessed land in town by the acre like you did farm lands?

A. No, sir; I don't think so; we didn't think so.

Q. Did you as an assessor consider it would be right and that you would be obeying your oath if you took a block of bricks in
85 Louisville that covered a half-acre of land, with stores renting at \$35.00 or \$40.00, and assessed it at four dollars an acre?

A. No, sir; that derived more profit than the land did, and of course we didn't think it would have been right.

Q. Did you count that that store from increased trade or additional sales, or the number of people coming there, would be worth more to the owners of the buildings?

A. That is what we based our ideas on.

Q. Then you took into consideration the use that the store was being put to?

A. In what way?

Q. I asked you whether you considered the use that it was being put to; in other words if it was being used as city property rather than farm use?

A. Yes, sir; in that respect we did of course.

Q. Now, you did not, did you, in making that, take into consideration whether there was a bank or store or barbershop or peanut stand on it?

A. No, sir.

Q. You didn't place a benefit on the business in that store?

A. No, sir.

Q. Did you try to assess businesses?

A. No, sir; didn't attempt that.

Q. Then, as I understand, you assessed the land and buildings regardless of whether rented for one business or whether it had any business at all?

A. Yes, sir.

Q. Did you count not only the business it was doing at the time but the prospective increase in business from the building of the road?

A. Yes, sir.

Q. When you came to the assessment of the railroad did you consider the business for which that road was being used, or did you consider it just as a strip of land running through all the farms along there?

A. Considered that just like we did the town property.

Q. I didn't mean the same per cent.

A. We considered it as a railroad; we didn't consider it as we did the land.

Q. Then do I understand that you mean instead of considering it as a strip of land a mile long and a hundred feet wide you considered it as a part of a going railroad that carried stuff back and forward?

A. Yes, sir.

Q. Now, in answer to Mr. Gaughan you said, or I understood you to say, you assessed the benefits against that road at ten per cent of the assessed value per mile. I wish to refresh your memory and see if you are not mistaken in that. It shows here that the assessed value per mile was \$28,500.00, and you assessed a benefit of \$2,000.00 per mile upon it. That is the correct assessment, is it not?

A. Yes, sir; that is correct, as I remember it.

Q. The act itself under which you were working, which I presume was read to you, or you read, says you must assess the railroad by the mile. Now, I ask you did you assess it like the book shows by the mile or on a per cent basis?

A. We assessed it by the mile.

Q. Then you were in error when you say you assessed it at the assessed valuation.

A. Well, we figured that, but it didn't figure quite ten per cent. We were figuring at first on making round numbers and assessed it ten per cent.

Q. The question I wish to ask you, did you in your conference figure that by percentage at all, or did you not take it like the act states and assess it at so much by the mile?

A. Yes, sir; we done that.

Q. Then were you not mistaken. You didn't take the value of the road and take any certain per cent of that, did you?

A. No, sir; we taken it by the mile.

Q. That is what I thought you meant, because I notice you assessed the L. & A. Railway Company, which was down at \$12;

500.00 per mile, you give it a benefit of \$1,500.00, and the Shreveport branch, which was assessed at \$18,000.00 a mile you gave a benefit of \$1,500.00 per mile, so the ten per cent assessment will not work out with any one of them, and I ask you if you were not mistaken when you said you assessed it on a ten per cent basis.

A. No, we didn't assess it on a ten per cent basis; we assessed it so much a mile.

Q. Now, in arriving at the assessment per mile, state what if any consideration, you gave to the fact that this road would, or in your opinion would, develop the country and give additional traffic to the road?

A. The country would settle up, more people come in here, and of course raise more stuff to be shipped out, and it would take more to do them, making more shipped in and out. That is the only way I knew to do.

Q. What would be the result so far as the railroad is concerned, of shipments in or shipments out during the winter or rainy season?

A. We will get more stuff to the railroad if we had good roads; get more there in rainy season. In a heap of places where there is a heap of stuff to be shipped such as timbers, in the winter cannot be hauled at all.

Q. What effect have you noticed or read about, or what knowledge have you as to better farming in countries where good roads have been built or are being built?

A. I haven't any direct knowledge, only heard other people talk about it and read about it.

Mr. Gaughan. I thing that would be an error.

Q. I will put *in* this way: what in your opinion will be the effect as to the character of the farming throughout this country—the effect from the building of this road?

A. I think we will have more farms.

Mr. Gaughan. To ask the witness these questions without any experience or knowledge of his own, he is not in position to express an answer.

The Court: I think he may answer.

A. My answer was this: It would bring more people in here and I would think it would increase the farming interests; we would have better farmers, more farming and better farming. I think that is the effect it would have. That is my opinion.

Q. In your opinion is a railroad of any value unless there are people to ride over it or ship goods over it?

A. I would not think so.

Q. Were these various questions about which you have been asked talked over or discussed between the assessors while or at any time during the making of this assessment?

A. About the increased farming interests?

Q. Yes, did you discuss those questions among yourselves?

A. Yes, we talked about them.

Q. Now, when this road is completed, does it not give a continuous line of good road from the City of Texarkana, with a ferry at Garland, right through into the City of Magnolia, and then on through towards Camden, where Mr. Gaughan lives, as far as some place near McNeil?

A. Yes, sir; I suppose there is a little gap in there that they have not got through.

Q. They are working on that road district in Columbia County?

A. Yes, sir; my understanding is it would give a continuous road from Pine Bluff to Texarkana.

88 Q. This road when completed will connect the county seats of Columbia, Miller and Lafayette Counties, and start on towards the county seat of Ouachita?

A. Yes, sir; that is what I have been informed.

Redirect examination.

By Mr. Gaughan:

Q. Mr. Bourland, in answer to my question you stated that you had before the assessment of the State Tax Board of Assessors of Railroads when you made the assessment of benefits against the Cotton Belt Railroad, and that you considered that and took a certain per cent of it as being the basis, not the basis, as being your assessment against the railroad company?

A. We based it the benefit would be so much per mile.

Q. How did you arrive at the amount per mile that you fixed?

A. We had it there, I guess; I don't remember just in what shape it was.

Q. Had what?

A. Had the amount.

Q. What amount?

A. The amount you asked for.

Q. Where did you get that?

A. We had that; we got it from the tax books I guess.

Q. You mean the \$2,000.00 a mile?

A. No, sir; the \$2,000.00 a mile benefit would be ten per cent of that per mile.

Q. Ten per cent of what?

A. Of what the road was valued at a mile. Well, it would not figure out ten per cent, as I told Mr. Moore.

Q. You all just figured it out and took it in round numbers?

A. Yes, sir.

Q. You figured at a certain per cent which figured a little over \$2,000.00, and then you just put it down in a round sum?

A. To be fair we put it down \$2,000.00.

The Court: You say you first undertook to determine what ten per cent would be of the assessed valuation for State and County purposes?

A. That is the way I understand it.

The Court: And that was more than \$2,000.00 per mile, but you just reduced it to the amount of \$2,000.00?

A. Yes, sir.

The Court: Is that the way you arrived at it?

A. Yes, sir; that is the way I thought I gave it a while ago.

89 Mr. Gaughan: Now, Mr. Bourland, you say in answer to counsel's question that this road through Lafayette County is only a part of road systems that are supposed to result in a road paralleling the Cotton Belt railroad from Texarkana to Pine Bluff?

A. That is what the intention is, I think.

Q. That is your understanding of what is to be done?

A. Yes, sir; I don't know whether it will ever be done or not.

Q. Let's just take this part in Lafayette County that runs parallel with the Cotton Belt railroad all the way through Lafayette County from Red River to the Columbia County line?

A. Yes, sir.

Q. Now, it runs perpendicular to the L. & A. [railway] at Stamps.

A. Yes, sir.

Q. In other words it crosses the L. & A.?

A. Yes, sir.

Q. There is not very much in the road district because it runs across?

A. You might say there is about six miles.

Q. Now, the L. & A. connects with the Iron Mountain and Frisco at Hope, don't it?

A. Yes, sir.

Q. That is going north?

A. Yes, sir.

Q. And it runs to the Mississippi River going southeast?

A. Yes, sir.

Q. Connects with the Mississippi River at Natchez?

A. Yes, sir.

Q. Did you assessors figure any on the probability of automobiles and trucks carrying freight right along by the side of the Cotton Belt railroad to Stamps, and passengers as well, and having those passengers ship out over the L. & A., or go out over the L. & A., and the freight shipped out over the same railroad, by means of trucks and automobiles?

A. You mean, haul it to the L. & A. for that purpose?

Q. Yes.

A. No, sir; we didn't consider that.

Q. Don't you know there are a great many people leave Buckner, the town where you live, and go to Stamps, and go to Little Rock from there?

A. They done that before we ever had any road and have been doing it for several years.

Q. The better the road the more they do it?

A. I expect so, because the better the road the more people have cars.

Q. Don't you know of a good deal of cotton that has been carried to Stamps by truck when the road is good and shipped over the L. & A. to the Mississippi River?

A. You mean do I know of it now?

90 Q. Yes.

A. No, sir; never been carried by trucks from Buckner.

Q. Not from Buckner but from Lewisville.

A. I don't know of it.

Q. If you had a good gravel highway running from Red River to Stamps there would be no reason on earth why that should not be done?

A. I don't see why they would haul it over there when you can ship it on the Cotton Belt.

Q. Didn't you consider that in making this assessment?

A. No, sir; I don't think that question was brought up at all.

Q. You did not stop to figure that a man could take a truck and ship cotton to New Orleans, carrying it by truck to Stamps, shipping over the L. & A. to the Mississippi River and putting it on a ship, that he could get the cotton to New Orleans a good deal cheaper than he could by taking it over the Cotton Belt.

A. I don't believe it.

Q. Now, as a matter of fact your opinion that the building of this highway through Lafayette County will increase the business of the Cotton Belt railway is purely an assumption, isn't it?

A. Yes, sir; I should say so, but I would mighty near bet on it though.

Recross-examination.

By Mr. Moore:

Q. You don't know that it would increase the value of forty acres of land, but you would bet on that wouldn't you?

A. Yes, sir.

Q. I wish to ask you one thing asked you by Mr. Gaughan and myself. You mentioned that you thought that ten per cent of the valuation was taken, but you saw ten per cent would not work out. I will ask you to refresh your memory, and didn't you and the other assessors talk over the question of the assessment against the Cotton Belt, and instead of making it on any assessment basis, didn't you assess by the mile, and then when you had gotten this ten per cent in your head, doesn't it happen to work out that it was something less than ten per cent, and that is the way you got it?

A. Yes, sir.

Q. State just what you did do?

A. We didn't practically take ten per cent though we figured at about ten per cent. We based it on \$2,000.00 a mile and then of course the rate came four per cent of that.

Q. Did you take any assessment and try to get ten per cent of that or five per cent, or any other per cent?

91 A. No, sir; we didn't.

Q. Did the assessors, or did they not, make all of their assessments by the mile for the Cotton Belt and for the L. & A. regardless of what the per cent would work out?

A. That was my understanding about it, yes, sir.

Q. But it figured something less than ten per cent; \$2,000.00 a mile would be less than ten per cent of the cost?

A. Yes, sir.

Redirect examination.

By Mr. Gaughan:

Q. You first took ten per cent of it, before you reached the \$2,000.00 estimate?

A. Well, I don't know as we did.

Q. Well, did you figure it afterwards?

A. We figured it would not quite run to ten per cent.

Q. How did you get the \$2,000.00?

A. We assessed it \$2,000.00 a mile.

Q. You stated you figured on the per cent. Did you figure on the per cent?

A. I don't know whether I said we figured on a per cent or not.

Q. Don't you remember whether you said that or not?

A. No.

Q. But you did figure on that?

A. We had to come to some understanding of what to put it at of course, but as to getting it ten per cent of what the valuation was, we didn't do it.

The Court: What was the basis on which you figured? How did you arrive at the \$2,000.00?

A. We figured that would be the benefit to the road.

The Court: You use the word "figured." Did you mean to say that you actually figured, or that was the conclusion you came to?

A. I didn't mean that; I just meant we consulted about it and determined it would be about right. I don't know as we figured.

Witness excused.

F. H. MILARD, a witness on behalf of St. Louis Southwestern Railway Company, being first duly sworn, testified as follows:

Direct examination.

By Mr. Turney:

Question. Your name is F. H. Milard?

Answer. Yes.

Q. Where do you live?

A. Chicago.

Q. What is your profession?

A. Civil engineer, engaged in cost accounting at present; employed as assistant to Director of Traffic.

Q. Located where?

A. In Washington, D. C.

Q. What are your duties?

A. To determine traffic matters, matters of rates, revenues and expenses.

Q. Do your duties refer to the compilation of statistics or of rates?

A. Statistics entirely.

Q. Relative to what matters?

A. To the profitableness or lack of it, as pertaining to freight service and passenger service, and the railroad business in general.

Q. Prior to the time that you were connected with the Director General's office in Washington where were you located?

A. In Chicago, as assistant manager of the Statistical Bureau of Western Railroads.

Q. What were your duties there?

A. Practically the same as at present. Compiling statistics in rate cases before the Interstate Commerce Commission and testifying in regard to those statistics.

Q. Mr. Milard, as a part of your duties did you receive, compile and analyze the statistics of railway operations of all railroads in the United States as compiled by the Interstate Commerce Commission?

A. Not as to all railroads; only as to western railroads.

Q. Can you state Mr. Milard, in a general way what has been the trend of density of traffic in all railroads from year to year in the west?

A. It has been upward, increasing the density of freight and passenger traffic.

Mr. Moore: Your Honor, I don't know just what they are leading into, but I want to object to that as having no bearing whatever on this question. The west is a wide territory and I do not know whether they are referring to California, Iowa or Western Texas. Before he is allowed to answer I think he should come and testify to the particular section of the country under consideration, or at least the particular railroad. I don't know but I suppose the west means anything west of the Mississippi River.

Mr. Turney: I will withdraw the question.

93 Q. How are the railroads in the west classified as to regions?

A. There are three; the central west, the northwest and the southwest.

Q. Now answer the question that I asked with reference to the southwest?

Mr. Moore: Your Honor, I re-propound the same objection because, although the southwest is just a third as large—

The Court: Now then to what do you think it should be limited Mr. Moore?

Mr. Moore: If he is going into the question of density, it should certainly be limited to sections of Arkansas that are adjoining or contiguous to the territory now affected by this road. I would say that was giving as wide a latitude as could be. If you take the values of land you have to bring up the values of other lands situated similarly.

The Court: I don't understand that he is asking about values of land.

Mr. Moore: No, he is asking about the density of traffic and the normal increase. Now he should bring that down if he is going to bring it at all, to the southwest or middle southwest of Arkansas because there might be an enormous increase in Texas, as there has been recently from the Burk-burnett oil field. That is in the southwestern district and that would account for that because in this particular instance we know what brought it about. If there is any abnormal reason why it has fallen off, such as a drought or excessive overflow we will know what that is, but when you go into the southwestern territory we cannot tell anything about it. He might as well go to Europe.

The Court: I don't think that it has that result Mr. Moore. I think the only way any light can be obtained on such a question as this is to limit of course, as nearly as can be, but I think that the growth of the southwest has been sufficiently normal that it will admit of some conclusions being drawn with regard to how conditions effect the density of traffic, or even of population. The assessor himself says that it is just simply a matter of estimate or conjecture upon his part, so that we have started with that proposition, or simply an estimate or conjecture. There is no knowledge upon his part other than the general fact that population and traffic does increase. I think that is admissible. The objection is overruled.

94 Mr. Moore: We save our exception.

Q. Mr. Milard, what states compose the Southwestern Region as you have defined it?

A. Missouri south of the Missouri river, Arkansas, Louisiana, Oklahoma and Texas.

Q. Now with reference to those states what has been the normal increase or decrease in density of traffic for the past six or seven years?

A. There have been slight variations, of course, but figures in general is about six per cent per year.

Q. Compounded?

A. No.

Q. Now, in other words, the density will increase 106 per cent of the previous year? Is that what you mean?

A. That is true.

Q. Is there any fixed relation, Mr. Milard, between density of traffic and net revenue of railroads?

A. None at all.

Q. How is the density of traffic of a railroad measured?

A. By the number of tons moving over each mile of track per year, as to freight service and the number of passengers moving over each mile of track per year as to passenger service.

Q. Can you give an example or illustration of that, so that we can understand it in terms of illustration?

A. Consider a piece of track ten miles long and that in a year a million passengers and a million tons of freight pass over that line,

then the freight density would be one hundred thousand ton mile per mile. The passenger density would also be one hundred thousand passenger miles per mile of line.

Q. Have you made an investigation with reference to the effect that density of traffic has had upon the per cent of return on investment in road equipment upon class one railroads in the southwest for the past five years?

A. Yes.

Q. Is that the statement? (Handing witness paper.)

A. Yes.

Q. Now will you just state to the court what that statement shows?

A. This statement shows the investment in road and equipment of the roads in the four states, Arkansas, Louisiana, Texas and Oklahoma, for each fiscal year from 1913 down to 1918, as shown by the sworn reports of these carriers to the Interstate Commerce Commission. It also shows the average miles operated which, of course, varied slightly from year to year. It shows the net railway operating income of those roads for each year and the per cent return on the investment, that is to say, the per cent return which the operating income, the last column of the statement shows the ton miles per mile of road which is a measure of all freight traffic density.

Q. Mr. Milard, taking up the statement itself for the year 1913, what was the density of traffic?

A. 622,151 ton miles per mile of road.

Q. In that year how much did the railroads earn on their investment in road and equipment?

Mr. Moore: Your Honor, I am going to make this one more objection. This statement that has been introduced here unless they bring the data from which that is made, which will take not three days, but half a day at any rate, is worth nothing to this jury, and it is a matter of common knowledge that since 1913 every railroad has been losing money, and it is also common knowledge that recently they have lost enormously, and if that is introduced to show that the roads have been losing money, and counsel will admit that and will say that within the last year they have lost nearly a billion dollars, but I think we ought not to incumber the record.

Mr. Turney: We are not offering this to show the return on the investment, or to show the loss of revenue. We are offering it for this purpose: To show that the density of traffic, the thing they say their road will increase, has absolutely no relation on earth to the value of the property.

The Court: Why can't you ask him that as an expert without reference to the exhibit or statement that has been made out?

Mr. Turney: Because these figures are taken from the financial reports of the government.

The Court: I understand they are, but if objected to on the ground that the data is not presented so that the other side can have the opportunity to examine them?

Mr. Turney: Why not?

The Court: There is no custodian of these reports here.

Mr. Turney: The Court takes judicial knowledge of the reports of the Interstate Commerce Commission.

66 The Court: I think that witness can testify as an expert, but I can't take judicial knowledge of it. I don't know anything about it. It is an absolutely absurd proposition that I take judicial knowledge of the reports of the Interstate Commerce Commission. The objection will be sustained.

Mr. Turney: Please note our exception.

Q. Have you the report of the Commission which shows these figures with you?

A. No.

Q. Mr. Milard, speaking from your knowledge as an expert, would an increase of traffic density of fifty per cent mean an increase in net revenue?

A. It need not; it might mean a decrease in net revenue.

Q. Well, in the history of the southwestern railroads what has it meant?

A. A slight decrease in the net revenue.

The Court: Now why is that?

A. Because the rate structure has fallen and an increase in the quantity of business has brought in a lower rate per ton of business handled, due to regulation by the Interstate Commerce Commission and the State Commissions in the proper exercise of their authority.

The Court: So it results from regulation?

A. Partly. Partly from increase in expenses beyond the control of the roads, distribution of taxes, increased wages and in the increasing price of material.

The Court: But the freight rates and passenger rates are subject to legislative regulation?

A. That is true.

The Court: And in that respect the business of a railroad is different from any other ordinary business?

A. Exactly so.

The Court: Because the ordinary business is subject only to competition?

A. That is true.

Mr. Turney: If the Court please, so the exception may be of some value, I would like to have this shown in the record.

The Court: Very well. On what ground to you object to that Mr. Moore?

7 Mr. Moore: On the ground that we have no data to show where it came from or anything here to verify it.

The Court: It will be identified as the Railroad's Exhibit 1, but in the objection of the Improvement Board it will not be received.

Q. Mr. Milard, with reference to the other exhibits the data is here and available?

A. In the minutest detail.

The Court: You may proceed with that.

Q. Mr. Millard, with reference to the effect or the difference in net revenue on the St. Louis Southwestern Railroad in—

The Court: Let me get the record straight. Mr. Millard I understand that you made up this statement which has been identified as Exhibit 1 from reports of the Interstate Commerce Commission?

A. Yes.

The Court: You haven't these reports here?

A. No, but I have here copies of those reports on which this statement was based. These are copies I made myself from the reports of the Interstate Commerce Commission.

The Court: But the original reports are not here?

A. They are not.

The Court: The ordinary published reports are not here?

A. Except as to 1917 they are not.

The Court: The objection will be sustained.

Q. Mr. Millard, with reference to the net revenue earned by the Cotton Belt in Jefferson County, Arkansas, what investigation have you made?

A. Made a list of the stations in that county. I drew off the revenue accruing in that county from the freight business for each month for the six years ending June 30, 1912 to 1917 inclusive. That freight revenue is the entire revenue received by the railroad at that station for any shipment moving from that station to any other station on the railroad when the freight was prepaid. That is called revenue on forwarded shipments. Freight revenue on any shipment received at that station was also drawn off without
98 regard to the point of that shipment.

Q. Did it include the revenue for the entire haul?

A. Yes.

Q. Did it also include revenue on a shipment originating in that county terminating out of the county on which the freight was paid at the terminus?

A. No.

Q. Are you positive of that, Mr. Millard?

(Question read by reporter.)

A. Yes, it did.

Q. Did it include the revenue on freight originating out of the county and passing through the county and terminating some place else?

A. It did not.

Q. Did it include revenue on shipments originating out of the county terminating in the county, the revenue on which was paid at the point of origin out of the county?

A. Yes.

Q. Then it included all the revenues regardless of where it was paid on all freight that was received in the county, or sent out of the county?

A. That is true.

Q. What did it include as to passenger traffic?

A. Only the revenue received at the station in the county.

Q. On what kind of passengers?

A. On all kinds of passenger business regardless of the destination of the passenger, and in addition it included all conductor's collections on the train for passengers originating at that station.

Q. Would that include all that had been passengers from any place in the county?

A. Yes.

Q. But would it be possible for you to obtain the passengers on the in-bound traffic?

A. That I could not obtain.

Q. Did you estimate it?

A. Yes.

Q. How?

A. By assuming that the in-bound was equal to the out-bound.

Q. Then you multiplied the out-bound by two?

A. That is true.

Q. What is the purpose of the study that you made in Jefferson County?

A. The purpose is to show the net revenue of the business in the county of the first three year period as compared to the second three year period.

Q. What was the first period?

A. The three years 1912, 1913, and 1914.

Q. Did you prepare that statement?

A. I did.

Q. Does that correctly show the difference in revenue between these two periods?

A. It does.

Mr. Turney: I offer that as defendant's exhibit 2.

Mr. Moore: Your Honor, I have not objected to these questions heretofore because I wished really to see where they were leading to, and what effect if any, they might have on the trial of this cause. I now object to them as being irrelevant, incompetent and immaterial and as simply incumbering the record. This purports to show that an examination has been made that shows a certain loss of revenue under operating expenses in Jefferson County and that during a certain other period in Jefferson County there was a difference of revenue, whatever that was, increase or decrease and without we stopped to go into the question of whether during those years Jefferson County has a [drought] or an overflow, or whether additional whole-sale houses went in or whether additional factories went in. We happen to know as a matter of common knowledge the absolute stagnation of business during the year 1914 and a great part of 1915, the year the war was on. I don't know whether the Arkansas river overflowed in 1915 but we had here an overflow that wiped out everything. If we go into all those conditions we never would get through. I don't know what the conditions of Jefferson County were; I haven't any witnesses here and I presume that this witness does not know; that he has made his data statement from data which he got in the

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office, and I therefore object as absolutely irrelevant to the point at issue.

The Court: Let's see about the irrelevance. You have brought out from the assessor that he took into consideration the fact, or the belief that traffic or tonnage of a railroad would be increased by reason of the construction of that road. This is introduced, I suppose, to show that for a certain period at least, the railroad tonnage if it has been increased has not resulted in greater revenue. I suppose that is the purpose of it. The statement made by the assessor, of course, was based simply upon his belief, and I think it is perfectly proper

for the jury to have the benefit of the actual facts, and the mere fact that certain conditions may have influenced it I don't think would render it incompetent. It might be shown that the traffic was influenced by certain conditions, but if no testimony can be introduced unless every possible avenue against its impeachment can be closed, why then we would not get very far in the investigation of any question.

Mr. Moore: No, sir, we would not, but the contention I make is that if we get persons who have knowledge of that section of the country, and who have knowledge of the causes that have brought about these increases or decreases in tonnage or revenue they could give their opinion and on cross-examination you could bring out the facts.

The Court: I don't think we can anticipate that Mr. Moore. We will have to get at this the best way we can. It is clear that it is a difficult matter but we must have the best light obtainable upon the proposition. If that is your only objection, it will be overruled.

Mr. Moore: I will save my exception to this.

The Court: I don't understand you are making any objection on the fact of the failure to produce the records themselves?

Mr. Moore: In this case if they have the original records themselves it would not be of any help because as a practical matter unless the attorneys stopped to study them out, they would not be of any help.

Mr. Turney: We tender the original records if they want them. The data is here.

The Court: I don't think an objection is good simply because it means that it might lead to inquiry and investigation of a lot of figures.

Mr. Moore: This case is not only important here, but it is going to settle the law that is far-reaching. I don't want to be technical. What I want to do is to get at things. The real objection is that this does not give any matter that has any bearing upon the case, from which the jury can draw any light. We do not object on the absence of the records themselves. That would be foolish.

The Court: I want to say that material like this was introduced and the Circuit court held that it was competent and the court recognized that it was impossible for the railroads to bring all the records into court. It would practically mean that the

Interstate Commerce Commission would be impeded or obstructed to that extent and the court at Little Rock overruled an objection made on the ground and the Supreme Court affirmed the

case where the objection was assigned as error. And in Oklahoma I withheld a ruling on the same objection awaiting the ruling of the Supreme Court, and when the Supreme Court held that that was not objectionable, then I permitted the testimony to go in in that form. It looks like this character of testimony can hardly be gotten in any other way, but the only thing that can be done would be to allow the other side time, if it asked it, to go and investigate these records.

Mr. Moore: I don't want to go through these figures.

Q. Mr. Milard, did you make a similar investigation on the Iron Mountain in Jefferson County for the same period?

A. I did.

Q. Did you make similar examinations of traffic and revenue conditions in Lonoke County on the Cotton Belt and Jefferson County on the Iron Mountain for the same periods?

A. I did.

Q. Are those statements the result of that examination?

A. That is true.

Q. Do they show truthfully the facts?

A. They do.

Q. Will you make these exhibits respectively, three and four to your testimony?

A. Yes.

The Court: They will be received.

Mr. Moore: Save our exceptions.

Q. Mr. Milard, did you make any examination with reference to the per cent traffic and net revenue allocated in the same manner of all stations on the Southwestern Railroad located within Road Improvement District No. 2 of Lafayette County, Arkansas?

A. I did.

Q. Is that the statement and investigation?

A. It is.

Q. Does that statement correctly show the per cent traffic and the per cent net revenue?

A. It does, based on the three year period July 1, 1914 to June 30, 1917.

(Statement identified as Exhibit 5).

The Court: It will be received.

102 Q. What have you with reference to the three year period June 30, 1914 to July 1, 1917, with reference to being an approximation of the average revenue of the railroads in the southwest under normal conditions?

A. That was the period which was commonly known as the period of standard return of the Federal Control Act and is the net railway operating revenue of those three years averaged together which is known as the standard Federal return now paid to the corporations for the use of the property by the United States Railroad Administration.

Q. The statement has been made here that 1915 was a bad year on the railroads in the southwest. Is that true?

A. Yes.

Q. How bad?

A. I don't know just how you mean, in comparison?

Q. No. Was it very bad or indifferent?

A. It was an indifferent year. It wasn't a year of calamity.

Q. How about 1916?

A. 1916 was at that time the best year we had had.

Q. How about 1917?

A. 1917 is the best year we have ever known.

Q. In the Southwest?

A. In the southwest.

Q. Do you know what the normal increase was in the southwest? Not the normal increase but the increase in the southwest of 1917 over the other years? In freight traffic?

A. Yes, sir.

Q. Never mind the figures.

A. Approximately thirty or forty per cent.

Cross-examination.

By Mr. Moore:

Q. Did I understand you to say Mr. Milard, that if there was a fifty per cent increase in traffic that it would result in a net loss of revenue?

A. No, I said that it might result in a net loss of revenue and that in the southwest it did result in no increase in revenue.

Q. Then with that fifty per cent additional traffic, no increase in net revenue as measured by the investment in road and equipment, would there have been an increase in revenue if there had not been an enormous increase in the price of coal and the wages paid to the men employed?

A. I could not say. There was no enormous increase in the price of materials up to June 30, 1917.

103 Q. Was there not an increase of over forty per cent in the price of coal prior to June 30, 1917?

A. No.

Q. What was the increase in the price of coal?

A. Ten cents a ton on the first of April, 1917. That is the only definite figure I can give you.

Q. You are positive of that, are you, that that was the increase?

A. That is one.

Q. Are you talking about rates or prices?

A. I am talking about the price of coal.

Q. Is it not so that there had been an increase and a very great one in all labor on the railroads at that time?

A. I believe not at that time.

Q. Are you positive as to that as you are that there was no increase in the price of coal prior to June 30, 1917?

A. The wages were beginning to be increased in 1917. The

Adamson law was effective June 1, 1917, and that of course was effective for the last six months of the year. That was the first large wage adjustment. It was the opening gun of the recent assault on railway revenues, of wages.

Q. What was the per cent of increase?

A. About two and a half per cent of the total revenue was granted by the increase in the Adamson law.

Q. Where were the operating revenues for Lafayette County obtained in making up the statistics you have here?

A. In the office of the statistician of the Cotton Belt Railway in St. Louis.

Q. Did you determine as to what items should go in these operating revenues?

A. Not at all; that is the total freight revenue in the column headed freight, and in the column headed passenger it is the total passenger revenue for that county. The freight is the revenue on all freight in-bound and out-bound. The passenger revenue is twice the revenue on out-bound passengers.

The Court: That, you say, was not shown by the books?

A. The out-bound was shown; the in-bound was not and I assumed it as equal to the out-bound.

The Court: That part was not taken from the books?

A. It was not.

The Court: You don't know that your assumption is correct?

104 A. No, except on general knowledge that when a passenger starts out he usually comes back.

The Court: Do you assume that when a carload of a commodity starts out that comes back?

A. Not at all. I used the actual out-bound and in-bound for freight. That assumption applies to passengers only.

Q. Where did you get item 7 which is shown as operating ratio of expenses to revenue?

A. That is the ratio determined in the Arkansas rate case on the St. Louis Southwestern, and is the average of 1914, 1916 and 1917.

Q. Then that is taken from the case of the Cotton Belt that went up for the line as a whole in the State of Arkansas?

A. That is true.

Q. How do you know that that would at all apply to that section of Lafayette County that is within this road district?

A. Merely because that is a part of the Cotton Belt in the State of Arkansas.

Q. You assume that the same ratio applied in Lafayette County that applied as an average over the entire state, did you not?

A. Yes, but for the same reason that I used the periods and used the same operation ratio for the same period.

Q. The measure would be immaterial; the showing would be the same if you changed the operating ratio.

A. In both periods.

Q. The assumption you have made would have the same operation expenses that applies to Jefferson County that applies to Polaski?

A. That is true, absolutely so.

Q. Then when you worked this out as the net increase in revenues during this period, it has to be an estimate has it not?

A. It does.

Q. And you individually have no knowledge of any kind of Lafayette County?

A. No.

Q. Were you ever in Lafayette County?

A. I don't know.

Q. You might have passed through it; did you come over the Cotton Belt?

A. No, I came over the Iron Mountain.

Q. Then you didn't come through the county?

A. My answer was I didn't know.

Q. You say the increase that would be received as a return on the investment is 13.9?

A. 13.9 is taken from Exhibit No. 4 and is the increase in the County revenue from all causes in the second period over the county revenue over the first period.

105 Q. I am talking about Lafayette County.

A. I understand but the 13.9 per cent on exhibit 5, line 12 is the same figure as the last line 13 on exhibit 4 and was taken from that place. What I mean to do is to compute the increase in the per cent revenue or received account on the Cotton Belt that would accrue in the three years following the present and for that purpose I used the per cent of increase of the 1917 period over the 1914 period that actually took place in Lonoke County on the Cotton Belt.

Q. Then instead of this being an estimate made from Lafayette County and for figures there you assumed that the same increase took place in Lonoke County that would take place in Lafayette County?

A. That is the assumption underlying Exhibit 5.

Q. As to what actually took place in those years you don't know.

A. This is a prediction as to what will happen in the next three years and until there is any data this is the amount of money that will measure the increase in the Cotton Belt's revenue in the next three years.

Q. I understood it was the increase that had actually taken place in 1914 to 1917?

A. No, it is the increase that actually took place in Lonoke County in the period 1914 to 1917 over the period 1911 to 1914. That is the actual increase of Lonoke County for the second period over the first period. Applying that per cent and the first to the actual revenue for the last three years of Lafayette County gives the measure of the increase that will come in the next three years.

Q. That is, if Lafayette increases just as quickly as Lonoke did?

A. Exactly, based on that assumption.

Q. Have you any information on which to base that assumption?

A. The fact that there has been an increase universally in the past. There has been a universal increase over the entire southwest as well as over the four states of Oklahoma, Arkansas, Louisiana and Texas.

Q. Has there not been in certain sections, due to discovery of oil and gas, enormous increases during that time?

A. Perhaps, I don't know.

Q. I will ask you if here in Miller County was there not a great decrease due to the unprecedented overflow in 1915 that washed out all the levees and alluvial crops?

A. I don't know.

Q. If that circumstance did occur would that not have caused a great decrease, if there were no crops raised that year?

A. Unless there were compensating increases in other parts.

Q. I will ask you if recently has not the T. & P. west of Fort Worth received an increase of freight absolutely enormous, possibly 50 per cent increase in freight and passenger?

A. I can not answer for the T. & P. west of Fort Worth but I answer for the T. & P. as a whole.

Q. Now I will ask you if it is not due to the opening up of the Arkburnett and Ranger oil fields and the traffic in and out?

A. I don't know. Abnormal increases and abnormal decreases occur but my assumption is based on the traffic as a whole, averaging the whole thing over the four states for a period of 6 years, and that, it seems to me is the only base upon which an estimate could be made. I could take selected instances and show that from one year to another the traffic was falling off, and then in instances like that T. & P. I could show that traffic was going up, but neither showing would be normal. It was for that reason that I took a three year period. It was for that reason that I used the same operating ratio in that period as the other, and that operating period was based on the three year record.

Q. And this data that is compiled was based on the assumption that Lafayette County will go up at the average that other sections have advanced, with the exception of the last two lines?

A. No. That statement is true as applied to the last two lines of the exhibit. The remaining lines on that exhibit are actual figures based on the actual revenue, July 1, 1914, to June 30, 1917.

Q. Now, in determining the increase that would take place, have you taken into consideration the fact that the building of the road in question will probably put extra families on every 160 acres, if not every 80 acres, in that district?

A. Yes. It is my understanding that there was a road improvement district in Lonoke County, Arkansas, in the first of these periods, and it was the analysis of Lonoke County, Arkansas, in which there was a road improvement district, that I based the figure of 13.9 per cent.

Q. Do you know where that road district is located in Lonoke County, or do you know save from the data you have compiled, anything at all in reference to Lonoke County?

107 A. No, I say that this 13.9 per cent is based on Lonoke County in which I am told that there was an improvement district.

Q. Do you know what per cent of Lonoke County was in cultivation when these figures were made up?

A. No.

Q. Do you know what per cent of Lonoke County is in cultivation at the present time?

A. I do not.

Q. Then have you not simply taken certain data that you assume applies to Lonoke County and laid that on Lafayette County, and figured from that data?

A. No, I have not assumed anything in regard to Lonoke County. I have taken the three year period from July 1, 1911, to June 30, 1914, and a second three year period following that, and I have computed what the increase in the county operating revenue from all causes was in that county. No assumption is in there at all; that is the actual figures in the revenue. Then, I applied that per cent of increase in the revenue to the actual revenue in Lafayette County, Arkansas, as a measure, as is stated in line 12 of the exhibit. That increase in the District Revenue Applicable to Return on Investment in Road, and that increase is determined by using the 13.9 per cent which was the increase in Lonoke County.

The Court: You mean the anticipated increase?

A. The 13.9 per cent is the anticipated increase based on actual figures of Lonoke County due to all causes. In other words, if Lafayette County raises the same crops as Lonoke, has the same cultivated area and advances as Lonoke has, then the 13.9 per cent that applied to Lonoke would apply to Lafayette during the next three years. That is true. That is the assumption of exhibit 5 in as much as there is an assumption, but that 13.9 per cent is the only assumption on exhibit 5 and it is taken from exhibit 4 without assumption.

Mr. Turney: What was the increase during the same period on the Cotton Belt in Jefferson County?

A. 11.4 per cent.

Mr. Turney: What was it on the Iron Mountain in Jefferson County?

A. 1.6 per cent.

Witness excused.

108 W. C. HUDSON, a witness on behalf of St. Louis Southwestern Railway Company, being first duly sworn, testified as follows:

Direct examination.

By Mr. Wooldridge:

Question. What is your name?

Answer. W. C. Hudson.

Q. Where do you live?

A. Pine Bluff, Arkansas.

Q. How long have you lived there?

A. Forty years.

Q. What is your business?

A. Cashier of the National Bank.

Q. Have you dealt in real estate and had to do with road improvement districts in Jefferson County?

A. Yes, sir.

Q. Do you know how many road districts we have in Jefferson County?

A. We have a large number; probably ten or twelve or more; including the ones in the city we have a great many more.

Q. Any drainage districts?

A. Yes.

Q. Any levee districts?

A. Yes.

Q. Do you know how many drainage and levee districts?

A. Yes.

Q. How many?

A. Levee districts, some six or seven; drainage districts, nine.

Q. Have you acted in any official capacity in any of the road improvement districts?

A. Yes, sir.

Q. In what district?

A. In District No. 4, building road from Pine Bluff towards Little Rock; and been assessor in No. 21.

Q. Where is No. 21?

A. Located west of the City of Pine Bluff, including part of the property in the City, taking in a road probably five or six miles in length.

Q. Are you familiar with the districts in the northeastern part of the county?

A. Yes, sir.

Q. Mr. Hudson, what effect have these road improvement districts had as to the traffic of the railway company, or whether they take railway traffic from the railroad?

A. It has had a tendency to decrease the passenger traffic enormously in my opinion, and the freight traffic largely.

Q. In what way?

A. On account of the automobiles, and our county at the present time is pretty well cut up by a good system of roads and the people no longer patronize the railroads in going from town to town, and the traffic largely is by automobiles.

Q. Have you a pike road from Pine Bluff to Little Rock?

A. Yes, sir; a good one.

Q. What effect has that had upon the people going to and from Little Rock?

A. It has a tendency to increase the traffic largely by automobile.

Q. Isn't it a fact that many persons now go to Little Rock and return by automobile that were it not for the pike road would ride on the train?

A. Yes, sir.

Q. Is that a custom of considerable extent?

A. A considerable extent.

Q. Then do you regard a pike as a benefit to the railroad that parallels it?

A. I do not.

Q. What value, if any, would a pike be to a railroad and to its property?

A. Very little if any. The tendency in Jefferson County at the present time is to consider valuation practically nil, not much more than \$250.00 per mile—two or three hundred.

Q. State to the jury whether that increasing value would be to the land occupied as its right of way?

A. It would probably take the same assessed benefit as the abutting property.

Q. Isn't it a fact that a number of the districts have made that assessment?

Mr. Moore: I am not going to object to this question as to the amount of that assessment, but if it goes in it of necessity opens up any other district.

Mr. Wooldridge: I withdraw the question.

The Court: The question is withdrawn and the jury will not consider it.

Q. Mr. Hudson, would there be any benefit derived from the road other than the increased value that might be made in its right of way?

A. I think not.

Q. Could there or would there be any value added to the ties and the rails in its road bed?

A. Absolutely none.

Q. Then your answer is that if the land is increased by a pike improvement, whether farming lands or in towns, that there would be the same increase and no more as to the right of way occupied by a railroad?

110 —. Yes, sir; that is my opinion.

By Mr. Turney:

Q. Mr. Hudson, you have stated that there have been a number of drainage and levee districts placed in Jefferson County. What periods of time, taking three year averages, would fairly represent the conditions prevailing in Jefferson County prior to the establishment of these roads, and the benefits received thereby, after the benefits were received, by the construction of the roads?

A. I would say a period from about 1911, 1912, 1913, or 1914. was the period before, and say 1915, 1916, and 1917 thereafter.

Q. When did you commence to make these improvements?

A. For roads?

Q. Yes, sir.

A. The first road was built possibly about ten years ago. It was a very short road. The people were so opposed to it that they wanted to hang the County Judge for building it.

Mr. Wooldridge: Isn't it a fact that nearly all these road improvement districts have been since 1911?

A. Yes, sir.

Q. And up to 1918.

A. Yes, sir.

Q. You have also been Treasurer of a lot of drainage and levee districts, haven't you?

A. Yes, sir; familiar with the creation of nearly all of them.

Cross-examination.

By Mr. Moore:

Q. What district did you say you were one of the assessors for?

A. Road District No. 4 Jefferson County.

Q. Where does that district run?

A. It starts on the intersection of B street in the city limits of Pine Bluff and extends to the Benton County line, running in a northwesterly direction parallel to the Iron Mountain railway through Jefferson County.

Q. To what County line?

A. Saline County.

Q. What year was that built?

A. It was built in the year 1913 and 1914, and was finished in the year 1915.

Q. Have you been commissioner for any other road or drainage district?

A. Yes.

Q. Did you give actual attention to this? What I mean is, did you go out on the district while they were being built?

111 A. Yes, sir.

Q. And were you active in your duties as commissioner?

A. Very active.

Q. What has been the result so far as to bringing land into cultivation by the building of these various roads?

A. The increase of actual land opened up along road district No. 4 has not been very great because the land along that road [as] of a poor grade of land and is not being settled very rapidly.

Q. What has been the ratio of increase, or approximate increase, taking Jefferson County as a whole, of land put in cultivation over a year or over a period of years since this good road movement started?

A. I would say there has been an increase in Jefferson County of probably ten or twelve per cent.

Q. What is the approximate percentage of open land in Jefferson County to-day compared to the total acreage?

— I couldn't give you the figures. The bottom land is largely in cultivation and the hill land is open.

Q. Would it be as much as eighty per cent?

A. No, I hardly think over fifty.

Q. Not over fifty per cent in cultivation?

A. Yes, sir; if that much.

Q. Do you know what the traffic is over the railroads now through Jefferson County and from Pine Bluff into Little Rock?

A. No, I don't.

Q. Do you know, or do you not know, that that traffic is greater now than it was five years ago?

A. No, I do not.

Q. In your opinion, I will ask you then, is that traffic not greater now than it was five years ago.

A. Not passenger traffic, I don't believe it is. In freight it may be a little more than five years ago. There have been more factories located there.

Q. There have been figures introduced here by an expert to show that there has been an increase both in and out. Would your opinion be that those figures were erroneous?

A. I couldn't say.

Q. Your opinion is that the passenger traffic has decreased?

A. If it has increased it has only been in proportion to the increase in population in the county.

Q. That is the only way it could come, is it not?

A. Yes, sir.

Q. Do you know the probable percentage of cleared land in Lonoke County to-day?

112 A. No, I don't.

Q. Has not the number of bales of cotton and the agricultural products in general in Lonoke County increased very considerably within the last five years?

A. Do you mean Jefferson?

Q. Jefferson I mean.

A. I have seen the statistics, Mr. Moore. I can't recall the exact figures. Jefferson County's crop in 1917, I believe was larger than it had been in a number of years. The crop has varied from about 35,000 bales to about 48,000 bales, I think, has been approximately the maximum crop in our county.

Q. This traffic that you mention as moving by automobile or by truck out of Pine Bluff is all local traffic is it not?

A. Through Jefferson County into Lincoln and from Jefferson into Grant principally.

Q. What I mean as to freight within thirty miles and as to passengers fifty miles?

A. Yes.

Q. You don't mean to say that the traffic in or out, or the car load movement, has been affected by the building of these roads?

A. I don't think so.

Q. Is it not fact that the increase of population, whether due to

the building of roads or the natural increase, brings more traffic in over the railroads to-day and more goods out of Jefferson County than it did five years ago?

A. I should think so because our county is larger, more people there, more lands in cultivation.

Q. As to the cause of that, what is due to the building of good roads and how much due to natural increase, you couldn't say?

A. No, I couldn't say the definite amount.

Q. Do you not know that emigrants in seeking locations will go to the countries that can furnish them facilities, that good roads aid and do settle those countries?

— Certainly they do; they had rather be on good roads than on mud roads.

Q. And do you know that opening of good roads has brought in emigration?

A. I couldn't say that it has brought in a great deal.

Q. But that is the tendency of the present movement in the State of Arkansas.

A. Yes, it is the tendency all over the country. Where you offer good schools, good towns, good roads and good improvements, it is the tendency for the people to flock to these centers.

113 Q. And hasn't it reached the stage in Arkansas that if any county lags behind and does not build these roads that it is left behind in the matter of progress?

A. Largely since the Federal aid act was passed.

Q. Since the United States government began doing that a county must build good roads or drop back?

A. Yes, sir.

Q. Do you know whether a railroad which is making or losing money, if it will lose less money or make more money if you can increase the traffic over the road?

A. Yes, if you keep down our expenses.

Q. I am not speaking of that. I want to get off the matter of expenses entirely because we know that they are losing money to-day. But you say if you increase the traffic will it not decrease the loss or increase the profit?

A. If they are operating at a loss it will decrease that loss and if they are operating at a profit it will increase the profit.

Q. Suppose that with a loss from or profit from a fixed investment, then will it not lessen the loss, or increase the profit, if you can get additional freight?

A. Certainly, I should think so.

Mr. Turney. Is that assuming that freight rates would stay the same?

A. That is assuming everything would stay normal; no increase in salaries.

Mr. Moore: The question of such an increase could have no bearing on that extra freight? If you increase salaries that gives net loss no matter what you- freight rate?

A. Unless you increase your traffic in proportion.

Redirect examination.

By Mr. Gaughan:

Q. From your testimony I judge that these good roads built where the lands are not very rich and fertile have not settled up the country?

A. No, sir; they have not in our county; not at all.

Q. It is only where the roads reach good bottom land that they have a tendency to settle up the country?

A. Yes, sir; and there has been a tendency for these people on the farm to move to town, and they can bring their children to town and they go back and forth every morning.

Q. If they move to town they still work that land?

114 A. No, they just supervise it. They used to stay there and work it. The tenant and share-cropper worked the land.

Q. That land is being worked, is it not?

A. Oh, yes.

Q. You would say then more people are not living on the plantations as the result of good roads?

A. Yes, sir; that is the condition in our county because they want to come to town to enjoy the churches, picture shows, ice cream and other things.

Witness excused.

J. M. GATES, a witness on behalf of the St. Louis Southwestern Railway Company, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gaughan:

Q. What is your name?

A. J. M. Gates.

Q. Judge Gates, you live in Lonoke County?

A. Yes, sir.

Q. At Lonoke?

A. Yes, sir.

Q. How long have you lived in that county?

A. Twenty years.

Q. Do you occupy any official position in that county?

A. I was County Judge until January 1, 1919.

Q. What business have you been engaged in in that County?

A. Mercantile and plantation business.

Q. Have you had any connection with or experience with the formation of road districts and the building of roads in that County?

A. Yes, sir; I was one of the original starters of the good road movement in my county.

Q. I wish you would please tell the jury how many road districts in Lonoke County and what connection you have had with them.

and what familiarity you have with the building of other roads and their effect upon your county.

A. We have eight roads that are actually constructed and have been constructed from two to six or seven years. We now have four or five that are created and will be in the course of construction within sixty days. I was a commissioner on No. 5, No. 7 and assessor on No. 2 and on No. 4 and No. 1—commissioner on No. 1.

15 Q. Commissioner on No. 3 and Assessor on No. 3? Have you completed any improved highways in that county that run parallel and near to any line of railways?

A. Yes, we built Road District No. 4 which runs parallel east and west with the Rock Island and connects with the Pulaski County District into Little Rock. And then we built Road District No. 5 which parallels the Cotton Belt on the south and connects with the England District lacking one mile that is not completed. There is a space of one mile between the two road districts which has been added. That is true of No. 4 and No. 5. No. 2 and No. 7, there is a mile of unconnected road between these two, but outside of that we have a net-work of roads in Lonoke County starting south of the Rock Island Railroad that covers the south and southwest part of the county south of the Rock Island.

Q. What is the general character of the land of Lonoke County?

A. Very rich; very fine soil in Lonoke County.

Q. What is produced in that county?

A. We produce, starting on the north side, fruit, strawberries and peaches and truck farming; coming to the central part we have the rice valley; on the west, southwest, south and southeast we have cotton and corn.

Q. Is it touched by the Arkansas River?

A. The Arkansas River touches it on the south. The Arkansas River was right against it but in a deal about seven years ago we added to Pulaski County about 100 feet between the Arkansas River and Lonoke County in order to enable them to complete their highway from Toltee to Little Rock, but at one time the Arkansas River was the south boundary line of Lonoke County.

Q. Judge, in your experience both as an assessor and as a commissioner have you had occasion to look into the question of the benefit that the building of a highway has on railroad property?

A. Well, I have taken into consideration the benefits that were applicable to the lands as railroads and towns as an assessor.

Q. Now, in respect to the benefit that an improved highway has to the lands of a country, I wish you would state to the jury what that benefit consists of.

A. Accessibility, one thing. In other words wherever you put a like road it has been our experience lands open up and houses are built and more crops are produced, and it makes those crops accessible to the market.

116 Q. Does it benefit the improved land more than the unimproved land?

A. I don't think it does. As a matter of fact I think of anything

from my theory of it it benefits equally as much as fifty-fifty, and if anything, according to my knowledge, it benefits the unimproved land because it brings it on the market.

Q. You mean per acre?

A. Yes, sir.

Q. In other words, suppose there was a tract of land immediately contiguous to an improved highway, say of five hundred acres, upon which there was a valuable residence, and there was the same character of soil in another tract located with respect to the highway the same way, would the building of this road in your experience, observation, and in your opinion, benefit this house or those improvements?

A. Not a bit in the world. It would not benefit the house but it would benefit the lands. The house could burn down and the land would be there with the same benefits.

Q. Would it in any way increase the cost of making the improvements on the unimproved land?

A. It would tend to decrease the cost because it would lighten the haul. A man could haul more per wagon on a pike road than he could on a dirt road, and the only difference in cost would be the cost of material. That, of course, would depend on what the market price of material was. Taking everything equal a man could build and construct on unimproved land where the pike road has given the benefit at a smaller cost for lumber, brick and material, at a smaller cost per wagon, than before the pikes came there.

Q. Do you think that idea would apply equally to the town property?

A. I think the town property, the land, would receive the same benefit.

Q. Now, in the town do you think the unimproved lot would be improved as much as a lot similarly situated and of the same size upon which there was a building?

A. The lots would receive the benefits, the building would not. The building would not receive the benefits of it.

Q. Take a lot there on which you have a building worth \$5,000 00, if your building burns down you can replace the building. The value is not added to the building, it is added to the lots?

A. That is my conception of it.

Q. Have you had any experience which leads you to think that your conception is the correct one?

A. I have had experience which leads me to believe it is correct. Personal experience.

117 Q. Now, in what respect does the improved highway, such as I have described, benefit railway property that is located in the district?

A. Well, my theory of that is that railroad property should be assessed on a basis equal to that of the surrounding territory, surrounding land; that is my idea of it.

Q. Do you think that an assessment which takes into consideration the improvements on the ground would be an unjust assessment?

A. Well, I look at it from a different theory to that, and that is the reason I said what I did. While the roads tend to bring business to a railroad, and where there are not any parallel like we have them, and especially on the Rock Island, there is no question about it but what land is opened up and more business comes to a railroad. But where the railroads are like we have them there and they are paralleling like they do the Rock Island, it detracts. Now, to give you an instance, if I may, our town handled back in 1910, 1911 and 1912, from eight to ten thousand bales of cotton per annum. Now it will average, taking the years, the market receipts in our town, I will give it an average of 5,000, and that will fully cover it; but that is the instance of where the road parallels the railroad.

Q. How is this cotton handled? How is it that the railroad don't get the haul?

A. Farmers haul this cotton 23 miles from Lonoke to Little Rock. They haul that cotton over the Pike road on trucks, automobiles and wagons, into Little Rock.

Q. That is due to the construction of this road, the fact that that is done?

A. Yes, sir. That is where I attribute it.

Q. Is there any other freight hauled on this road that parallels the railway except cotton?

A. Yes, sir. They haul their chickens, eggs, butter and market produce in cars and trailers, right through the town of Lonoke and on the pike into Little Rock.

Q. How is the passenger business affected?

A. I can't pass on that. I think that the passenger condition is about normal. And I should say that the freight, as far as that is concerned, now since these roads have been building. There has been a lot of land opened up and as a matter of fact the rice business has taken the place of a great deal of the loss of cotton business. I think the condition is about normal. I think the passenger business is about normal, but it should show a heavy increase. For instance,

if the road was not there the railroad would get all this business. As I figure it I will say we lose from three to four thousand bales per year, according to the crop year, but that is replaced by the rice industry.

Q. But if the pike road did not parallel the railroad the Rock Island would get the entire haul of everything?

A. I think that is true. Well, I know it is. From Toltec on the Cotton Belt into Little Rock before the No. 5 and No. 7 roads were built I shipped all my cotton, and all the farmers did, over the railroad into the compress, and now we haul. We have got about the same distance to haul into Little Rock and so has the other farmers, and we haul where we used to ship that over the Cotton Belt.

Q. When were most of these roads completed that were built by the improvement districts?

A. I think about 1915; the bulk of them were built in 1914 but most of them were wound up in 1915.

Q. Now, would you think that the years 1911 up to 1914, or 1912 up to 1915—would the three years prior to June 1914, the three

year period prior to June 1914, would that freight and passenger business to and from Lonoke County fairly represent the condition of your County before these roads began to be effective?

A. I think so.

Q. Now, would you think the years 1915, 1916, and 1917, would fairly represent the conditions of the county after the roads began to have their effect?

A. Well, I think 1916 and 1917, yes.

By Mr. Turney:

Q. Do you know when the Cotton Belt branch was completed?

A. You mean the Altheimer branch of the Cotton Belt?

Q. Yes, sir.

A. I did know, but it slipped my memory.

Q. If I gave you the date would you recall it? November, 1911?

A. The railroad was completed about twenty years ago from Little Rock down to Altheimer.

Q. I am talking about the Central Arkansas & Eastern branch.

A. That little jerkwater that runs from Meto across there?

Q. Exactly.

A. It runs down there now about nine miles, but I think somewhere about 1910 or 1911.

Q. Do you think that helped the country any?

A. I do.

Q. Do you think that the increased traffic in the years mentioned might have resulted in part from the opening up of the country due to that railroad?

119 A. Well, the railroad was due to opening up a great deal of country, quite a little of it.

Q. Well, was the reverse true? Was not that country opening up due to the railroad?

A. Sure. There was very little opened up before the railroad went through. But after the railroad went through we all began opening land down there, and now we are putting a road district down through there.

Cross-examination.

By Mr. Moore:

Q. What percentage of Lonoke County is cleared today?

A. As near as I can get at it, 65 per cent. It might go 70.

Q. You state that worlds of land were opened up since the roads were built?

A. Yes, sir.

Q. In your opinion they have been a great aid, they and the drainage together. Of necessity road districts and levee districts have to be combined?

A. Well, the drainage preceded the roads about one year. We couldn't build the roads until we put the drainage in.

Q. Has not the building of these roads had a tendency to cause

good houses to be built and owners to live on various plantations in Lonoke and Pulaski Counties?

A. Well, I can hardly agree with that. There has been some good homes built. The tendency of the plantation owner is to get into town. I left my plantation and went to town and that is true of the planters as a whole. We want to move to town where we can educate our children and enjoy a little life, a little pleasure, and I hired a man to look after my affairs every night and I live in town.

Q. There are a series of beautiful homes as you cover those pikes you mention between Little Rock and Lonoke, there are many beautiful plantation homes?

A. That is true, but the owners don't all live in those homes.

Q. Don't you know that the building of these roads has been a prime cause of those homes being built whether they are lived in or not?

A. Yes, to a certain degree. The finest homes have been built before the road went through. The Burch home was built and the McLaughlin and my home was built before the road was put through. The idea was this: to get a way to get into town. There has been several vacant homes that have been built since the road was put through. As a matter of fact we fellows that had no roads wanted to build them to go to town, and the other fellow, after they got there, built his home, so it is about an equal break.

20 Q. You have mentioned that a great deal more produce has been hauled since the roads have been built.

A. That is due to the lands opening. They were forced on account of taxation.

Q. When these taxes go on they all understand it. Does not that force these lands into cultivation?

A. It will either force them into cultivation or compel the owner to sell them.

Q. It does cause that territory to open up?

A. It certainly does.

Q. It has a strong tendency through a accessibility to bring that land into service?

A. It does.

Q. Then isn't it a fact that you can get people, whether white or colored, to come into a country and buy and cultivate lands along good roads that you could not get without them?

A. I think so.

Q. Haven't these roads been the primary cause of Lonoke County pushing forward as it has in the last five or six years?

A. Yes, sir.

Q. Does it not only have this effect, not only of opening up land crops that could not be handled, strawberries and peaches—

A. The pike roads we are building right now, the three north roads. The men that raised the truck patches have held out against the pike roads and now are coming to it. But up until now they haven't any pike road in that fruit belt at all; but they haul when

the roads are good the best they can, but they haven't a pike road in the north end of the county now.

Q. But where the roads go through doesn't it give an opportunity to raise truck, whether strawberries or beans, that you could not market without the good roads?

A. Why certainly a man would be very foolish to go in the bottom and try to raise a truck patch without a macadam road.

Q. Can you on land already opened intensify your farming that would bring more per acre than cotton and corn?

A. Certainly, but that is done by intensive farming.

Q. In your opinion do not these roads help bring that about?

A. Certainly, after these roads get in there we all could be doing intensive cultivation. We are forced to do it. We have got two demonstrators in Lonoke County for that purpose, one in the bottom country and one in the hill country. And we can't rely on cotton to take care of taxes. For instance, in 1918, we practically had a cotton failure in the bottom country. Our cotton crop, which will average 38,000 bales, this year won't go over 20,000. That is what forced me to get busy with these demonstrators. The building of the good roads, putting taxes on us, forced us to get down to intensive cultivation and it is going to force these people in the hills to do the same thing.

Q. Now, do you not think just as you have shown the great benefit to the country property, do you not think that the town property in Lonoke gets an enormous benefit from the good roads that are built?

A. Well, they get some benefit, but I do not think that Lonoke has gotten the benefit that England has gotten.

Q. But if this traffic is increased through the country, the trade from the country is what makes these towns, is it not?

A. Oh, yes.

Q. If you increase the people and increase the money they receive, you increase the business?

A. You increase the business.

Q. What ratio or on what method did you assess these towns for benefits when you were building roads?

A. Well, when we built the first road, that was No. 1, that was not in any town; No. 2 did not enter a town. No. 4, we took the assessed valuation and then took a percentage of the assessed valuation as furnished us by the county clerk. Then we took a certain per cent of that valuation. That is my recollection.

Q. Do you remember what per cent you took, or would that be asking too much?

A. I would not want to be positive, but I think in the town of Lonoke we took—

Mr. Gaughan: We object to that question as to the per cent of the assessment.

The Court: What is the ground of your objection?

Mr. Gaughan: The same objection that Mr. Moore had to ours.

Mr. Moore: I don't think I made any objection. Your Honor.

Mr. Gaughan: On this ground, that if you go into the per cent,

at means the amount of the assessment, the amount of the assessment on the dollar. If you go into that in this case we will have to go into it in a great many other cases, and the objection is that it will incumber the record with so much evidence, and it has been done in so many ways that it would not be wise to go into it.

The Court: The objection is overruled.

A. I am not positive, Mr. Moore, but if I mistake not I think we assessed the town about 15 per cent. I will not be positive.

Q. Is that your best recollection?

A. Yes, sir.

Q. In making that assessment of necessity you state you used the county and State assessment?

A. Yes, sir.

Q. That, of course, took each piece of property at the assessment, which if it had a building on it included that?

A. No, if I recollect that road law, it provided that we had to furnish a certain per cent, I believe 30 per cent was as high as we could go on it. I think that was the old road law. That is the one we acted on in our district No. 2. We had a large district and we took the State and the County assessment from the tax books and made an assessment which I think was 15 per cent on the real estate regardless, without any improvements. We didn't take into consideration that on this block was a ten thousand dollar building nor on that lot was such and such a building, but we took that on the basis of valuation.

Q. You just took whatever the State and County assessment showed and took this percentage?

A. Yes, sir.

Redirect examination.

By Mr. Gaughan:

Q. You say that you did regard the improvements on that assessment or not?

A. We did not. In order to meet our requirement under that old law it was immaterial and we took a certain per cent of this in order to meet our requirements from the bonding company that it required and also the requirements of the State law.

Recross-examination.

By Mr. Moore:

Q. How did you arrive at the assessment in these districts that you were connected with against the railroad property?

A. Well, they differed. On the first one we took the valuation as set by the State Commissioners. I believe, Mr. Moore, now to give you an idea, I think on that road was assessed \$45,000.00 a mile in round numbers. I think then that we assessed that around 20 per cent or \$9,000.00 a mile. Now, that is in round numbers. I am

not going to be accurate. We took the assessment from the State, but then when we created the other districts the other members of the boards I am on took a different view and assessed according to acreage. I think that went down to sixteen dollars an acre or something like that.

Q. Were you connected with a district that went into court and in the Federal court?

A. No, I was not. To begin with I created that district and we went into the County Court and we fell out amongst ourselves and I resigned and turned it over to McLaughlin. I was connected with it but I got out from under it before it went into the Federal court.

Q. You have mentioned the quantity of traffic that is moved by automobile and truck. Even granting that the railroad company does not get that traffic which is true, still from the increase of traffic does not the railroad get more now than before the increase?

A. Well, to be fair, I think the Rock Island maintained a normal condition on traffic. As a matter of fact it might show an increase. It might, because they have developed the rice industry there. I understand they handle a million and a half bushels of rice that was not handled before.

Q. That is local traffic?

A. Yes, sir.

Q. On all that traffic when the long haul takes place some one of these railroads gets it?

A. You mean after the produce is hauled into Little Rock?

Q. After being hauled into Little Rock it is still shipped out to seaboard and some of the railroads get the long haul?

A. There is no question about that.

Q. The Iron Mountain, Rock Island and Cotton Belt all three enter Little Rock and all three go through Lonoke County?

A. Yes, sir.

Q. So some one of these railroads simply gets the haul from Little Rock; instead of picking up the haul at Lonoke, they catch it at Little Rock. Then the loss of traffic you have referred to is not the loss of any long haul, but the local haul?

A. The local haul pure and simple.

Q. What is the rate from Lonoke to Little Rock by rail on cotton, say?

A. I think it is dead head.

Q. Instead of issuing a dollar rate, I was going to ask you if it didn't go in at a rate of a dollar a bale but instead of that you think it is dead head?

A. That is my conception of it.

Q. Then on that short haul the railroad does not lose money by it going in by truck, but they save the expense of taking it to Little Rock?

A. If they dead head it they don't get anything out of it except the long haul.

124 Q. Therefore the railroads, taking them as a whole, get the benefit of all this increase in traffic?

A. They get it indirectly or directly.

Q. And they do get the increase in inbound traffic, in corn, if you are unfortunate like we are and have to ship it in this year, or your flour. They get the increase to feed the extra people.

A. No question about that.

Redirect examination.

By Mr. Turney:

Q. Is the Iron Mountain in any of these southern districts?

A. The Iron Mountain does not go through Lonoke County on the south; it goes through the north.

Q. Is it located in any of these districts?

A. No, sir.

Q. Did it have any tax assessed against it at all in the district in which the city of Lonoke is located?

A. No, there is no pike located along it.

Q. Then the cotton that the Rock Island used to haul into Little Rock, it has to compete with the Iron Mountain in Little Rock for the long haul?

A. Yes, sir.

Q. Before it got it without any competition at all?

A. Yes, sir.

Q. You have given the basis of assessments of property that have been made. After the experience that you have had there will you state what your conclusion is now that the benefits derived by a railroad located within a road improvement district represent?

A. Well, I said to begin with my conclusions were, my ideas were, that railroads should be assessed on the same basis with the surrounding land or territory.

Q. Do you mean the same rate per acre?

A. Yes, sir.

Q. Do you think that the steel rails receive any benefit?

A. Not a bit in the world.

Q. Or the ties?

A. Not a bit.

Q. I take it that you mean merely the naked land?

A. The only benefit they get would be the increase in business if any.

Q. And that you gave when you first started out a \$9,000.00 assessment per mile, you now cut down to \$250.00?

A. Something like that.

Recross-examination.

By Mr. Moore:

Q. Nearly all of these road districts in Lonoke County have used an assessment very much in excess of \$250.00 per mile. Take those Judge Wall's represented; they paid as much as a thousand dollars per mile?

125 A. They got into court with them. I don't know how it was adjusted.

Q. They got into court?

A. That was No. 5, Mr. Moore, and on this \$9,000.00 per mile of the Rock Island we finally reduced that.

Q. But when you were assessor you assessed at this basis you have shown, something like 20 per cent of the value?

A. That is my recollection. Eventually though we made a deal with the Rock Island and I think reduced the assessment. I think we cut it down to \$3,500.00.

Redirect examination.

By Mr. Turney:

Q. In your district how much was land assessed per acre?

A. The first zone \$12.50, second zone \$10.00, third zone \$7.50 and the fourth zone at \$5.00.

Recross-examination.

By Mr. Moore:

Q. What proportion of that was collected or will be collected?

A. Under the ratio that is laid out, one and one-half per cent.

Q. Each year.

A. Yes, sir.

Q. For how many years?

A. Twenty years.

Q. Then you will collect thirty per cent of the assessment?

A. That is what the law allows us. Then No. 4 is 1.6 per cent. They vary according to the assessor of the district?

Q. Those amounts on the district for twenty years?

A. Yes, sir.

Q. So in each case you will only get a little less than one-third of the money they put there. The other was put there to build up and strengthen your bonds.

Mr. Turney: The last three established in your county the railroad properties were assessed on the area basis?

A. Yes, sir; that is my understanding.

Mr. Turney: And assessed on the same area basis of adjoining land?

A. That is true.

Mr. Moore: Were they created under the Alexander act or special acts?

A. I couldn't say; I think they were based on special acts.

126 Mr. Gaughan: Regardless of whether they were special acts or the Alexander road law, those assessments were made by the assessors?

A. Made by the assessors and approved by the county court. Under its law they advertise it for a day and hearing and they come in and if they have any objections they hear them and the County Judge either lowers or leaves it where it is, and finally it is all approved.

Q. Any one can object to his being too high or to any one else being too low?

A. Yes, sir.

Witness excused.

At this point the court adjourned until tomorrow morning at 8:30 o'clock.

Saturday, May 17, 1919, 8:30 a. m., court met pursuant to adjournment.

Mr. Gaughan: I wish to introduce a certificate from the County Clerk of Lonoke County showing the assessed amount, the amount of the assessment of real estate, personal property and the number of polls for the years 1911 to 1917 inclusive, and the same kind of certificate for Jefferson County.

Mr. Moore: I wish to object as being incompetent and irrelevant and having no bearing and throwing no light upon the amount of the assessment that should be levied on this or any other property in this road district in Lafayette County.

The Court: I can't see where that is relevant, Mr. Gaughan.

Mr. Gaughan: We have introduced testimony to show the increased business of the railroads in these two counties since the creation of these road districts and the building of the improvements that have been done in these two counties. These two counties were selected because there had been more roads built in these two than any other two counties in the state. Now if we can show that the increase of population and the increase in real estate and personal property values have been out of proportion to the increase in the railroad's business, it then becomes a very material matter.

The Court: Your idea then is to introduce it simply on the question of the increased business, increased traffic coming to the railroad by reason of the construction of these roads?

Mr. Gaughan: It shows this: The Court will remember that the assessor who was put on the stand stated that in arriving at the assessment of the railroad's benefit that they considered the increased business of the railroad that would result from the construction of the highway. Now if we can show that in the counties where these roads have been built extensively, there has been an increase in the value of real estate and personal property and an increase in population, then the corresponding increase in railroad business that would tend to contradict or rather to show that the expectation of the assessor will not materialize, that is that it does not follow. We can only show that by experience. We think this is better testimony than mere guess work. We can only tell, your Honor, what will happen by what has happened.

Mr. Moore: Since looking at this, I had not examined it, I have

two other objections which I think are both fatal to the introduction. First, it is a matter of common knowledge that the Supreme Court of Arkansas has taken judicial knowledge of, that the assessment in this State, instead of being on a 50 per cent basis uniformly, according to the report of the Tax Commission, run from as low as 15 per cent to 65 per cent. I do not know how Jefferson County stands, whether it is one of the extremely low or high. There is no proof to show it. Without proof of that kind, which opens up the door to bringing in anything, this compilation is of no value whatever.

Mr. Gaughan: That seems to be wholly immaterial, because this covers a number of years in one county, and the other covers a number of years in another county. It makes no difference whether they have a rule of assessing property at 15 per cent or 85 per cent.

Mr. Moore: For that reason I do not think that will be admitted. Take for instance if such testimony has been introduced in the rate cases, and some one county of Oklahoma when the question was objected to about another county a hundred miles from there, or the increase of any other product or article of valuation. It couldn't have any bearing. There might be local conditions that would make it absurd to use one in trying out the other. Then I come to the second. There is no deposition of any kind, just an affidavit of the County Clerk showing what his certain records reflect. That, as I remember the law of Arkansas, cannot be introduced at all. There are certain records of the clerk specifically stated, which the certificate of the clerk brings in, deeds, judgments and papers of that kind. I had occasion to get certain matters out of the Secretary of State's

Office not very long ago and in looking up I found that I could
128 get papers there specified under the certificate and introduce them in court, but to get certain other records which were needed in the trial of a particular case it became necessary to take the deposition of the Commissioner of State Lands, so the other side could cross-examine and bring out all the facts, and he couldn't certify that such and such a record shows so and so about the delinquency or forfeiture of certain land. This is no deposition; we have had no chance to cross-examine, and the law does not allow matter of this character to be introduced purely by the certificate of the county clerk.

Mr. Gaughan: That is a public record and this is merely a certificate of the clerk showing that the record shows so and so. It is only a total of the Clerk's record.

The Court: Unless you can introduce a statute enabling you to introduce that, I think his objection is good. I can understand that the clerk can make a certificate saying that the certificate is a copy of certain records in the office, but this is not a copy of it, it is only a deduction.

Mr. Gaughan: It is just a certified copy of the total figure shown on his record.

The Court: If you can find a statute that authorizes that I will take it up.

J. R. STUART, a witness, on behalf of St. Louis Southwestern Railway Company, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gaughan:

Q. What is your name?

A. J. R. Stuart.

Q. Where do you live?

A. Stamps.

Q. How long have you lived at Stamps?

A. I have lived there twice; this time I have been there since October, 1914. Prior to that time I was in Missouri two years, and from 1903 to 1912 I lived in Stamps.

Q. What business are you engaged in?

A. Life Insurance business.

Q. How long have you been in that business?

A. Since 1912; that is I have devoted practically all my time to it since then.

Q. What contract do you represent?

A. Equitable Life of New York.

29 Q. Do you sell life insurance only?

A. Just life insurance; I am district manager.

Q. What business were you engaged in before you went into the life insurance business?

A. I was office manager of the Bodeaw Lumber Company, in the store.

Q. How long did you work in the Bodeaw Lumber Company's store?

A. About seven or eight years.

Q. What county were you born and reared in?

A. Dallas County, Alabama.

Q. When you came to Arkansas did you go at once into the Bodeaw Lumber Company's store?

A. Yes, sir.

Q. The only business, then, that you have ever followed in Arkansas is working in the store of the Bodeaw Lumber Company and in the life insurance business?

A. The only thing that I have devoted my entire time to. I have been interested in some other things.

Q. What official connection have you with the Lafayette County Road District?

A. I was one of the assessors.

Q. Are you still one of the assessors?

A. I don't know whether we are discharged yet or not. I supposed my services were ended when we made the assessment and it was accepted by the county court.

Q. Are you on the same Board of Assessment that Mr. Bourland was on?

A. Yes.

Q. The other assessor lived at Lewisville?

A. Yes, sir.

Q. The three assessors lived at Lewisville, Stamps and Buckner?

A. Yes, sir.

Q. Can you recall when it was that you gentlemen made the assessment in this district?

A. I couldn't without looking at the book.

Q. Can you tell from memory what year?

A. It was last year.

Q. Some time in May?

A. April or May, yes.

Q. Where did you make the assessment?

A. At Lewisville at the court house.

Q. Do you remember how long you were engaged in making the assessment?

130 A. We were over there three days one time, and it seems to me that—well, I suppose we had a meeting before that when we went into court and received some instructions from the County Judge and were sworn in by the clerk.

Q. I believe you three gentlemen went down there before you made this assessment and took your oath and were sworn in?

A. Yes, sir.

Q. And you received some instructions from the County Judge?

A. I couldn't say exactly.

Q. You don't remember?

A. No.

Q. When you met together for the purpose of making the assessment, what property did you assess first?

A. I think we assessed the land first.

Q. Do you recall about how many acres of land there were in the district?

A. Probably sixty-five or seventy thousand.

Q. When I say lands, I mean the lands outside any of the incorporated towns?

A. Well, I think there were only 3,000 or 3,500 acres in these towns, but with that exception practically all the land in the district is outside of the towns.

Q. Do you remember the total acreage of land?

A. Between sixty-five and seventy thousand acres, I judge.

Q. About seventy thousand acres?

A. Somewhere in that neighborhood, yes.

Q. Did you gentlemen go over those lands?

A. Not at the time we made the assessment. I presume each one of us had been over it. I guess Mr. Barham as a land man knows every foot of the land. I have fished and hunted over the county.

Q. Your examination had been made of these lands before you were assessor and while you were hunting and fishing?

A. Yes, and any peculiar knowledge that we naturally possessed of the country. We didn't feel that it was necessary for us to go over and examine each piece of land separately.

Q. It wasn't necessary either on account of the manner in which you gentlemen decided to make your assessment?

A. No.

Q. You assessed it as I understand, on the area basis?

A. Yes, sir.

Q. In other words, you paid no attention to the value of the land nor to the improvements on the land?

131 A. No, sir.

Q. Nor to the earning capacity of the land?

A. The only thing we considered was the proximity of the land to the road in question.

Q. You assessed all these lands on that basis?

A. Yes, sir.

Q. You figured that the lands in the first zone would be increased in value by the building of this road to the extent of \$4.00 an acre?

A. Yes, sir.

Q. And that the lands within the second zone by reason of the building of this road would be increased in market value \$3.00 an acre?

A. Yes, sir.

Q. And that the lands within the third zone by reason of the building of this road would be increased in market value \$2.00 per acre?

A. Yes, sir.

Q. And that this was true of all this land regardless of improvements, value or earning capacity of the land?

A. Yes.

Q. In other words, you simply looked to see how much the market value of these lands would be increased by the building of this road, and that is all that you looked at?

A. Yes, as a matter of fact if there were any difference, judging from my own standpoint, I think the difference would be in the unimproved land; that is the benefit to unimproved land would be greater than to the improved land.

Q. And you also think that land in a state of cultivation that would produce a bale of cotton per acre, was not improved by this road any more than a piece of land that would produce or take ten acres to produce a bale?

A. Not necessarily. Of course the fact that the road was there would not make the land any better. But we did assume by reason of having this road there a man might grow a more profitable crop possibly than cotton.

Q. As I understand it you figured that by reason of this road the market value of land in that road district, within zone 1, would be increased in market value \$4.00 an acre?

A. Yes, sir.

Q. And that is as far as you looked?

A. That is the substance.

Q. Now when you got to the town, Mr. Stuart, how did you make the assessments?

132 A. We made that on a percentage basis. We considered that the only practical way to do it, because a lot one-fourth of an acre certainly would receive more than \$1,000 benefit, and that might have a store building on there, as in the case of the Bodew Lumber Company store doing something like a quarter of a million dollars' worth of business a year; and we just simply tried to figure it from a common sense basis and to make an assessment that in our judgment was equitable.

Q. You figured that the best way to make the assessment in the town was simply to use the assessment for taxation purposes?

A. Yes.

Q. Now, in making that assessment, you considered then necessarily the improvements that were on this property in the town.

A. We considered them in so far as the valuation was taken from the assessor's books. We first met and discussed the general proposition of the assessment for benefits, and after considerable discussion we agreed that there wasn't any hard and set rule that would apply to all classes of property in this district; so we did the thing that in our judgment was the fair thing to each class of property separately.

Q. Well, regardless of that, as a matter of fact you simply used the assessment made by the assessing officers who were assessing property for State and County purposes, when you got to the town?

A. Yes, sir.

Q. Now, you stated that there was a store building in Stamps in which there was a million dollars' worth of business being done a year?

A. I said a quarter of a million.

Q. I just simply gave that as an illustration. In assessing that store building did you take into consideration the amount of business it was doing?

A. We did not.

Q. You simply took that building and the lot it was on, and took that from the assessor's books?

A. Just like we did the rest.

Q. And as a matter of fact you didn't pay any attention to the amount of business that was being done by the owners of any of the town property, nor by the parties who occupied any of the property?

A. No, but we realized that the assessment on the bank was considerably higher by the fact that it was more valuable, and the same rule would apply. The point I was trying to make we couldn't assess that property by the acre and we had to have some other rule.

133 Q. Now, the point I want to ask you about is this: In making these assessments to property in town, you paid no attention to the amount of business or character of business being done in the houses on these lots?

A. No, sir; we did not.

Q. Now, Mr. Stuart, when you come to the assessment of the railroads, upon what basis did you figure that assessment?

A. We figured it by the mile.

Q. In what way did you ascertain the amount of benefit per mile the building of this highway would be to the railroad property?

A. Well, we had to assume of course that this road that was being built there would naturally tend towards a density of population and it was a reasonable assumption that a density of population would aid the railroad. That has been their contention in times past, and in discussing the matter between ourselves we inquired some as to assessment that was made by some other districts and we wished to be fair about it. Since I have started I will tell it all. My motion originally was that we assess the Cotton Belt at \$3,000.00 a mile. Mr. Bourland, or Mr. Barham, I forget which it was, stated that they thought that possibly a little bit high. They wanted to be fair to every one, and understand I wanted to be fair too, but I thought that \$3,000.00 was an equitable assessment, and the other two agreed and we made the assessment at \$2,000.00 per mile.

Q. Where did you get the idea of \$3,000.00 a mile?

A. We just discussed the matter of how much we should assess it.

Q. Didn't some one come before your assessing committee and tell you that in some road district over on the Kansas City Southern road, that that railroad had been assessed by the Board of Assessors in that district the sum of \$4,000.00 a mile?

A. No.

Q. And isn't that what influenced you in fixing the rate at \$3,000.00?

A. No, I have been over in that road district and my recollection is I asked some one over there, but I don't think any one appeared before the committee at all. The road district that I speak of is the one that runs from DeQueen to Horatio and naturally being interested in good roads I was endeavoring to find out the basis while I was there, and I asked somebody how that road was to be paid for, how it was provided, and I think I inquired about some other districts too. But it has been over a year ago now; I don't remember where I got my information or how I arrived at it.

134 Q. Now, is it not true that the fact that you received information from some source that some road district had assessed the Kansas City Southern at \$4,000.00 a mile is the thing that influenced you in proposing to assess the Cotton Belt at \$3,000.00 a mile?

A. Possibly that did influence me some, as I understand that the K. C. S. had accepted an assessment. I don't remember whether it was \$3,000.00 or \$4,000.00; it was something thereabouts; that they had made a settlement of it and that it was satisfactory, and I inferred from that that it must be equitable. And some other road districts had assessed the road even higher than that, so *me* assumed that \$2,000.00 would be a fair assessment.

Q. You say you heard of some other district assessing the railroad higher than that?

A. I think so.

Q. But you are not sure about that?

A. I would not be positive about it, no.

Q. What was the extent of the inquiry that the Board of Assessors

made with reference to the assessment of Railroad property in other road districts in Arkansas?

A. I couldn't say what the others did. I simply made my own inquiry from time to time.

Q. How many different railroad assessments in the State of Arkansas did you inquire about?

A. Really I couldn't say, Mr. Gaughan.

Q. What was the lowest assessment of any railroad in any road district in the State that you learned of?

A. I don't recall.

Q. Did you gentlemen attempt to make any effort to ascertain the value of the steel rail on the Cotton Bent road?

A. No, sir.

Q. Did you make any effort to ascertain the value of ties or bridges on it?

A. We did not.

Q. Did you make any effort to ascertain the amount of business that was being originated in this road district that was handled by the Cotton Belt?

A. We did not.

Q. Did you make any effort to ascertain whether or not the business that the Cotton Belt was doing that was being originated by the territory in this road district was profitable or not?

A. We did not.

Q. Now, what estimate, if any, did you gentlemen make as to the amount of the increased business that the building of this highway would bring to the railway company?

A. I couldn't say definitely, Mr. Gaughan. But only about twenty per cent of Lafayette County, according to my recollection, is
135 in cultivation, and we assumed that this road would have a tendency to develop that county more than anything else that we could do, and as such there would naturally be an increase in both the inbound and outbound business.

Q. Did you gentlemen at the time you made this assessment of property, about that time, figure up the amount of unimproved, uninclosed land within this road improvement district?

A. We didn't figure it up; we just simply estimated it. In fact I presume Mr. Barham knows very nearly the exact acreage that is in cultivation. He would probably have to figure on it a little but he would know just about. He had been sheriff and collected taxes and has been all over it; estimated timber all over the county; he knows practically every foot of land in the county and I think possibly it was his statement, I couldn't say positively about that, but any way we were under the impression that about twenty per cent of the county was in cultivation.

Q. Do you know what part of this road district is in Red River bottom?

A. Approximately thirty miles.

Q. Square?

A. Possibly not so much, because I don't know exactly where that bottom might be considered to begin. The road crosses the

railroad about two miles from Lewisville, and skirts a little ridge just at the outer edge of the river bottom and then goes down through the bottom; possibly there is not very much; it probably runs through about four miles of the river bottom, and of course the district is six miles wide which would make twenty-four square miles.

Q. Well, if it was three and one-half miles long and six miles wide?

A. That would be about twenty square miles.

Q. The total length of the district is about twenty miles isn't it?

A. I think so, yes, sir.

Q. Now, after you get out of Red River Bottom, what is the character of the country that is embraced in this road district, the character of the land, I mean?

A. Most of it is up land; part of it goes through Dorcheat bottom.

Q. Most of it is what we used to call the pine flat land?

A. It is kind of hilly and broken.

Q. The country between Stamps and Lewisville is level, pine flat country?

A. A good many hills along that road.

136 Q. What kind of hills are they?

A. Sand and gravel and red clay, mostly.

Q. Are they big or little hills?

A. Well, just medium; you can make them on high all right.

The Court: Mr. Stuart, with reference to vacant lots in towns you made no difference between those lots and the improved property?

A. We did not. We simply made a 15 per cent benefit on the assessed valuation.

Mr. Gaughan: You didn't consider that the building of this road would increase the value of the steel rails that were on the company's right of way?

A. We did not.

Q. Nor the value of the ties?

A. One thing more I want to add, in speaking of towns, we made a ten per cent assessment in the town of Lewisville, and 15 per cent in Lewisville, Buckner and Stamps.

The Court: That was on account of the zones?

A. Yes.

Cross-examination.

By Mr. Moore:

Q. You stated that you did not take into consideration in assessing lots in these towns the fact that there was or was not a building on that lot, but did you not consider that that had already been taken

into consideration by the State and County assessor in placing the assessment upon which you levied the 15 per cent?

A. We did, naturally.

Q. Now, did you consider in making that assessment whether the business done by any one of these stores or banks was successful or was a losing business?

A. We did not.

Q. In assessing the farm property did you take into consideration whether one man was a good farmer and making money and another one was not, and had his place mortgaged, and would probably lose it?

A. We did not.

Q. Then you placed on that land or on that town property what you counted would be the benefit received by the property, regardless of whether it was successful or profitable, or whether it was wild and vacant lots, did you not?

A. We tried to figure it just as though we ourselves might buy that land, and figured the lowest benefit that we considered would accrue to that land by reason of this road.

137 Q. Then, when you came to the railroad property in assessing that did you take into consideration what you thought would be the benefit to the railroad from the building and settling of the country and the traffic increase that would come from the building of this road?

A. We took it into consideration. We did not sit down and take up a mass of figures to prove our contention, but we simply assumed that as the business of the road increased that the profits or earnings at least would naturally increase with it.

Q. Now you have stated that you had knowledge of this country from having lived there several years before, and then returning and living there three or four years; that Mr. Barham, one of the assessors, had lived there twenty-five years, and been tax collector and sheriff, and land man. Did you or the other assessors in conference attempt in any mathematical way to work out particular benefits to particular property, or did you use in making these assessments, whether to the land, whether to the town property, or whether to the railroad, the general knowledge you had gained from your life and experience through many years in that immediate section?

A. We simply figured that out from the experience and knowledge that we had. We didn't consider it necessary to compile a lot of figures.

Q. Did you think after having lived there as long as you had, and as the other assessors had, that if you had taken an auto or a mule and ridden over that property, that you could have gained any knowledge better or other than you already possessed, or any calculations that would have assisted you in making that assessment?

A. I don't think so. I think I am just about as well acquainted with it now as if I rode over it a month. In fact for several years I have been riding all over it.

Q. Then, would you say that was the reason you did not stop and

go out and examine the towns and property and railroad before making that assessment?

A. We didn't consider it necessary to do so.

Q. Now, you mentioned that you had been up in the course of your business on the Kansas City Southern and had heard something there as to the assessment agreed upon between the road district and the Kansas City Southern. I will ask you whether you know of your own knowledge whether any of the benefits that have been anticipated have occurred up there in the way of increased land, or intensive farming of whatever grows, of more profitable freight being received as a result of these roads?

A. Yes, indeed.

138 Q. State what you know of your own knowledge in reference to that?

A. My first visit to Horatio was about seven or eight years ago. The country at that time was just beginning to be developed; land was very cheap. The class of houses around there as a rule were very medium, and they were raising a little bit of fruit, aside from that orchard, but most of the crops were cotton and corn as I recollect, and most of the people who lived there were the natives, the ones who had been there for some time. I came back to this country in 1914 and pretty soon afterwards went over to Horatio and I noticed quite a decided change then right immediately joining the town. A good many people were coming down from Illinois, Indiana and Kansas. Since this road has been built I have been out on the road and these fellows are going further out, considerably further out. I was over there about two weeks ago, and I sold a truck to a man out there who raises strawberries, and he is putting in cantaloupes this year, and I asked him why he never raised cantaloupes before and he said he was ten or twelve miles from town and he couldn't haul them to market. But now that they had built that road he could make four or five loads a day with that truck, so he had planted thirty acres this year in cantaloupes. The same thing is true of quite a number of other farmers. Now, this man didn't live directly on the highway, but he was off on a feeder from this highway, two or three miles distant.

Q. Do you know whether the railroad companies, when owned and controlled by the owners, employed any men such as agricultural agents, to try and develop the country?

A. Yes.

Q. Did the Cotton Belt?

A. They did at one time.

Q. What was the reason for spending the money, expense account and salaries, if you know?

Mr. Turney: It is obvious this witness cannot know what reason actuated the railroad.

The Court: Do you know what the reason was?

A. I know the reason that the agricultural agent gave.

The Court: I don't think that is competent, through that source?

Mr. Moore: I think if a man is acting through an agent making speeches and telling people what they want them to do, and a man

hears him make the speech and hears him do that repeatedly, he knows what that man is for.

139 The Court: You are assuming the very point in question.

Here is a man employed to do a certain thing, and you are proving his authority by his own statement.

Q. Do you know what these agents did in going through this section of the country, or do you know whether they brought any persons in with them, and if so what they did with those persons when here?

A. They sought to encourage emigration and diversified farming. They carried samples of different things raised in this section. They did induce people to come down here with a view to locating along their line.

Q. Do you, or did the commissioners, think that the building of this road would induce people to locate, would open up territory and traffic, and bring additional business to the railroad?

A. Yes, sir.

Q. What, if any effect, do you think the building of this road will have on the business of the railroad during the winter or wet season when ordinarily the dirt roads are in bad or impassable condition?

A. Well, so far as the business from the country is concerned, when the roads are wet, there is cotton in Red River bottom now that has been there all winter, that they have not been able to get out. The same thing applies to stave bolts and things of that kind that they can't bring in when the roads are bad. After the roads are finished there they can bring that stuff out at all times of the year without having to dump it all at once.

Q. How would that affect the volume of the business as to running level or being congested in a few certain months?

A. Naturally I think it would equalize the traffic there if they could bring it in any time they cared to do so. It seems to me that they would do it in place of everybody trying to get in at once.

Q. Do you know whether the railroad is running throughout the year an average number of trains for the local or through service, whether those trains are hauling ten cars or forty cars of freight?

A. I do not.

Q. You stated, I believe, that it was first your opinion that this assessment should be three thousand dollars per mile, but after discussion with your associates you agreed with them to make it just and right \$2,000.00 a mile should be accepted.

A. I didn't think that \$3,000.00 was too high, but they thought \$3,000.00 was too high and overruled me, and then we all agreed to make the assessment \$2,000.00 per mile.

140 Redirect examination.

By Mr. Turney:

Q. Mr. Stuart, you stated in answer to the direct question of counsel that your understanding was that more perishable freight had been given to the railroads in Horatio by reason of the building of the roads there.

A. Yes, sir; I stated in my judgment it was more profitable.

Q. How much railroad experience have you had?

A. Just simply riding up and down the roads.

Q. Have you ever worked in the freight [department]?

A. I have not.

Q. Do you know anything about rates?

A. Only so far as I have shipped things by rail.

Q. Have you ever shipped anything by car load?

A. Yes, sir.

Q. What class of stuff have you shipped?

A. Well, mostly it was inbound stuff; it wasn't stuff that I was shipping.

Q. Do you know as between the two classes of freight which is more profitable?

A. I have a general idea about it. I am not an expert.

Q. Upon what is that idea based?

A. Well, for an illustration: probably you can carry 20 bales of cotton in a car, and it will take mighty good land to make one bale to the acre, so it will take practically 20 acres of land to make one car of cotton. You might be able to raise a solid car load of potatoes on one acre of land. It is possible to do it. I figure, naturally, that perishable goods, when carried in big quantities or in car lots, I should say, would take a higher rate, that is strawberries and cantaloupes. I simply assume that would be more profitable than hauling cotton.

Q. You don't know then as a matter of fact that perishable fruit requires specially iced cars that require special trains running with the speed of passenger trains to transport them, and require more careful handling and are transported at an actual loss.

A. I do not. I presume, judging from the difference in the rate charged, that they get a rate that is commensurate.

Q. You just assume that?

A. I assume that.

Q. But you know nothing about the actual cost of transportation?

A. Absolutely not.

141 Q. And you don't know the difference in cost of a freight train moving ten miles an hour and one moving thirty miles an hour?

A. I do not.

Q. Or the cost of transportation of refrigerator cars or when composed of box cars?

A. I do not.

Q. You know nothing about the amount of actual net revenue that is derived by any kind of freight?

A. Absolutely not.

Q. You mentioned the bringing out of more stave bolts. Those bolts could be gotten out at certain times of the year?

A. They are gotten out.

Q. The road does not make any bolts?

A. It might be the cause of people making them. If they are going to make them and stick them out in the woods and let them rot they are not going to make them.

Q. They can make them in the summer?

A. They can if they are not engaged in something else.

Q. Most of the fellows that make those stave bolts are farmers not engaged in their crops; he turns his time to making stave bolts and cross-ties when he is not busy in his crop.

A. The time to do that is in the winter months.

Q. Doesn't he ordinarily do it after he has laid his crop by?

A. After he has laid his crop by.

Q. Do you know when the volume of business on the railroad is heaviest?

A. I assume it is during the time when they are hauling cotton and wheat.

Q. Do you know when it is the lightest?

A. No, I don't.

Q. In your answer to Mr. Moore's direct questions you assume that the railroad's haul was lightest in the winter months. Did you intend to convey that impression?

A. It wasn't my idea that he was questioning me when their heaviest load was. He was asking if this stuff was accessible during the winter months.

Q. You didn't intend to say that the effect of these roads would be to equalize the burdens of the railroad or equalize the density of its traffic throughout the year?

A. I meant to say that it would make it possible for this freight to come in any time of the year, and that this would have a tendency to equalize the freight instead of it all coming in in one month.

142 Q. If the effect of these roads would be to equalize the traffic so that the summer months were the months when there was the least traffic and the winter months were the months when there was the most traffic, would it? Even in summer months the farmers are not necessarily devoting all the time in the crop?

A. State the question again.

Q. If the traffic is lightest on the railroad in summer months and heaviest in winter months, then to enable the farmer to put his produce on the railroad in winter months will not equalize the railroad's burden of carrying the traffic?

A. I should not think so.

Q. Going to the town of Horatio. You say you went there seven or eight years ago and you found land values low. What were they?

A. I think about three or four dollars an acre.

Q. When was the road constructed?

A. That was a good while before the road was constructed. I think that has been constructed in the last two or three years.

Q. Was it constructed when you went there after you came back to Stamps?

A. Yes, sir, it was.

Q. What was the value of the land then?

A. It run from \$15.00 for very rough land to possibly \$75.00 or \$100.00 an acre.

Q. The land that was three or four dollars an acre?

A. Yes, sir.

- Q. Do you ascribe that to the road?
- A. Part of it. That right immediately adjoining the town, of course, developed considerably before the road was ever built there, but since the road has been built, the road out from town, naturally has increased, and I think has increased more in proportion than the land immediately adjoining the town.
- Q. You say now it is worth seventy-five to one hundred dollars, and it was worth three to four dollars. How much of that can be ascribed to the road?
- A. I couldn't say definitely how much of that was due to the road.
- Q. Your best estimate?
- A. I haven't made any estimate.
- Q. Do you think half of it was?
- A. I couldn't say that.
- Q. What is your best judgment about it?
- A. I don't know that I have ever tried to figure out the proportion that was due to the road and the proportion due to diversification of crops and to new people coming in. All these things have a tendency to affect it.
- Q. You have answered Mr. Moore and stated the diversification of the crops and the coming in of the people was due to the roads.
- A. I don't say that altogether.
- Q. What other thing?
- A. I said that land out from town a considerable distance people are able to raise certain crops now that they were not able to raise before the roads were built because they couldn't get that stuff to market. A man told me that he required all day and half the night to make a load in to town but it was possible now for him to make four or five loads in with a truck, and that being the case the land would be worth more because instead of having to plant it in corn and cotton he could plant it with cantaloupes.
- Q. I understand all that, but my question was what other fact beside of the road has led to the diversification of crops and the increased population?
- A. The price that they are getting for this stuff.
- Q. The price that they are getting for the crops has led to that?
- A. Yes.
- Q. Would that have led to that without the road?
- A. Yes, to a certain extent.
- Q. Even if they couldn't have hauled it in?
- A. People from remote districts could not have hauled in any more maybe.
- Q. Then I understand the effect of your answer, leaving out the people who could get to town, practically all this increase that you say was due to the road?
- A. No, I didn't state that.
- Q. Well, how much?
- A. I couldn't say; I told you a while ago.
- Q. Now, you have stated that the facts that resulted in the increased price of land was the diversification of crops and the bringing in of people?

A. Yes, sir.

Q. You have said that this would have come regardless of the road?

A. To the nearby adjacent properties.

Q. Where they could have gotten their crops in to town without the building of the road?

A. I think so.

Q. But in the remote districts without the road they could not have diversified their crop and they could not have gone back and forth to town.

144 A. Not to the same extent that they do now. Some people came down there before they ever had a road of any sort as far as that is concerned.

Recross-examination.

By Mr. Moore:

Q. Mr. Stuart, can you or any one take the advance in lands that has occurred in Horatio, Miller County, Lafayette, or anywhere else and tell what has come from natural increase, building of roads or from other causes?

A. In my opinion they can not.

Q. Then I understand from your answer to examination of counsel you have stated the facts as you saw them and have given your opinion that certain increases came from roads, but do not and cannot state the proportion.

A. No, sir.

Q. Now, you were asked whether you knew as a fact that railroads actually lost money from hauling shipments of strawberries, peaches and perishable goods, and you answered that you did not know. I will ask you whether or not you know that the railroads have encouraged the raising of such crops and do solicit the shipment of such crops?

A. They have. They have sent cars with stuff like that all over the country, demonstration cars, with the idea of encouraging people to raise that very class of stuff.

Q. Now, although you are not a railroad man and do not know whether they are making or losing money, does it seem reasonable that any business would encourage a business if the more they got the more money they lost?

A. I don't think so.

Redirect examination:

By Mr. Turney: Going back to Lafayette County, you said you thought there was 20 per cent. of the land lying in the road district, or in this county, in cultivation?

A. I said approximately that, in my opinion.

Q. And the benefits that are going to accrue to the road district in this road district is the putting in cultivation of that other eighty per cent?

A. Probably all the 80 per cent. would not be put into cultivation.

Q. Well, a good part of it.

15 A. I have always tried to boost Arkansas and my county particularly, and I sought to encourage our friends from the north to come down here. I have seen men go out there and they got bogged down and they immediately lose their interest in the market. Nine out of ten told me they liked the country and would stay there if it were not for the roads. That is why I assume that if we built roads in Lafayette County we will get that business. I am not a real estate man.

Q. Mr. Stuart, do you think when you have the good road that runs through this approximately 45,000 acres of bottom lands and also through the remaining 30,000 acres, if your judgment of thirty square miles is correct, of hill lands, that the hill lands will be settled up in the same ratio as the bottom lands?

A. The hill lands are more densely settled now than the bottom lands, but it unquestionably will have a tendency to settle that up. And you know all along this highway are little roads leading into it.

Q. They are not improved?

A. No, they are not improved but passable only. Some of them are referred to as settlement roads but they are feeders for the main road.

Witness excused.

H. E. FLECK, a witness on behalf of St. Louis Southwestern Railway Company, being first duly sworn, testified as follows:

Direct examination.

By Mr. Turney:

Q. What is your name?

A. H. E. Fleck.

Q. Where do you live?

A. St. Louis.

Q. What is your business?

A. Land appraiser for the Wabash Railway.

Q. Land appraiser in what department?

A. Land department, valuation department.

Q. For what purpose?

A. For the purpose of ascertaining the value of our right of way land.

Q. Let me ask you the direct question. Are you at present engaged in the valuation of naked lands for the purpose of submitting that valuation to the Interstate Commerce Commission?

A. I am.

146 Q. Prior to that employment were you engaged in a similar employment on the Cotton Belt?

A. I was. In 1915 we made valuations in Arkansas, Missouri and Louisiana.

Q. Did you value the naked land of the right of way and all property of the Cotton Belt between St. Louis & Texarkana?

A. Yes, sir.

Q. In ascertaining the value of the right of way of the naked land, what was the measure of that value with reference to other lands?

A. The valuation for our right of way was obtained from the land values in zones.

Q. How did you ascertain that value?

A. In farm lands we zoned it, that is, so much of a distance of the right of way as will fall under the same influences of the naked land values, that was a zone.

Q. I don't care so much about the mechanics of it. I want to know how you ascertained the value of the naked lands?

A. By sales, by opinion and all those things.

Q. Did you make a personal examination of the land?

A. Always, we walked over the properties to be valued.

Q. What business were you engaged in prior to the time you entered that?

A. Real estate business.

Q. Did you value the naked land of the St. Louis Southwestern Railway Company lying in Road Improvement District No. 2?

A. I did, sir.

Q. Outside of the cities and towns, what was the area of the right of way of the company in Road Improvement District No. 2 of Lafayette County?

A. 221.37 acres.

Q. What was the value of the naked land?

A. \$2,359.68.

Q. Now did you value also the property of the naked land of the towns of Buckner, Lewisville and Stamps?

A. I did.

Q. What was the value?

A. \$22,327.31.

Cross-examination.

By Mr. Moore:

Q. You say you were in the real estate business?

A. In St. Louis before accepting this position.

Q. What character of real estate did you handle?

A. Well, we handled city property and also country property.

Q. In what states?

A. Illinois and Missouri; none in Arkansas.

Q. Well, as a whole, how do the values in Illinois and Missouri run as compared to value in Arkansas?

147 A. Farm land?

Q. Farm land.

A. Farm lands in Illinois \$300.00 an acre, and farm lands in Arkansas through which the Cotton Belt runs, runs, five, ten and twenty dollars an acre.

Q. You had never had any experience in Arkansas prior to making this examination?

A. None whatever.

Q. Had you ever been in Lafayette County before?

A. Been through it.

Q. You can't get much idea about real estate value traveling that way, can you?

A. At that time I wasn't so very well bothered about real estate.

Q. Then you gained no knowledge of real estate from those trips?

A. None whatever.

Q. Are you capable of going out in Lafayette or Miller Counties and judging as to the real value?

A. I think I can, sir.

Q. In what way?

A. First I will ascertain if there was any sales, find out the assessed value, and then by opinions of various people who are posted on the different grades of land.

Q. Then the only way you get it would be to get what somebody else had sold for, and what somebody else thought it was worth?

A. I said by opinion. That is about the only way you can ever get the value of land.

Q. In St. Louis, where you are acquainted, can you get and give an opinion of your own as to the value of a certain piece of land without any knowledge from anybody else?

A. Well, being versed in certain parts of town I may, and certain other parts I would have to do the same as now.

Q. You couldn't of your own information give the value of a certain piece of land?

A. Yes.

Q. Of your own opinion can you do that?

A. The values in each particular town differ as to lots &c., but after inquiring what approximately would be the value of certain lots then I can about determine what the outer lots would be, but that is supported by opinion, also sales if there are any.

Q. If you wished to buy eighty acres of land over there would you be willing to purchase that without employing some local man to find out, and on whose judgment you would buy that land?

A. You mean if I was not acquainted?

148 Q. If you were not acquainted, as you say you are not.

A. No, I would not. I would have to ascertain what the land value of that class of land if I wished to purchase.

Q. How long were you along the right of way of the Cotton Belt in Lafayette County?

A. I couldn't state, but we averaged per day or month fifty miles a month. That would be about two miles a day. That would be the average.

Q. Then if this right of way crosses there, as is shown by the book, 16.94 miles it would have taken you approximately 8½ days?

A. Eight or ten days, Mr. Moore, is about what we would spend there.

Q. And in that time you gained the knowledge of the value of

every piece of land from Garland City where it crosses Red River back to Dorchest creek where it crosses there?

A. Yes.

Q. Don't you think that was pretty swift work to tell what lands were?

A. No, sir; I don't; because the nature of the land is not what you would call expensive lands. As I stated the Cotton Belt passes through about the poorest lands in Arkansas. Then after we leave the corporate limits we zone that. It didn't take very long. Of course I priced the best price I could get because I wanted a good value of my right of way.

Q. Then instead of walking over each piece of land along there you went over it and zoned it on a motor car?

A. That is the farm lands, yes, sir.

Q. You said you couldn't get an idea of values from a Pullman window.

A. We didn't make the values but the values of that land between these stations could have been made from an observation car, because it was three, five and ten dollar an acre land.

Q. What was the highest value you placed on any land in that district?

A. Now, at Buckner—understand we value lands close to town as being more valuable than other lands, and within the corporate limits of these small towns there is considerable acreage that is not lotted. Of course that was averaged from fifteen, twenty and thirty dollars an acre.

Q. That is adjoining the town?

A. Yes.

Q. How far away from the town would you go on that twenty dollars an acre?

A. If I remember right it is a very little distance from the town. After that we passed into this poor land as a rule.

149 Q. What did you value the land two or three miles away, so the town did not affect it?

A. Five, ten, fifteen, twelve and fifteen dollars an acre; it all depended upon the condition.

Q. Now, the highest that you placed that save adjoining towns was how much?

A. Twenty dollars an acre.

Q. Where was that land situated that you placed that on?

A. Fifteen dollars an acre near Lewisville.

Q. East or west?

A. West of Lewisville, after we left our yards it is twelve dollars, ten or twelve dollars. East of Lewisville fifteen dollars.

Q. Ten or twelve dollars was the highest you placed any of that land west of Lewisville?

A. Naked lands, yes, sir.

Q. Now, what do you know as to the difference if any in land values to the east of Lewisville and to the west of Lewisville? Is there any?

A. I don't remember exactly. Out of the city limits coming this

way from Lewisville I remember there is some farm lands a little beyond the city limits. I think the west is the best, if I recall it, west of the city limits.

Q. You think that west is better than that east?

A. Well, it is probably about equal. I can not recollect just exactly.

Q. Do you know?

A. It is about equal.

Q. Do you know whether the lands east or west from Lewisville are the most valuable? You can refer to your notes.

A. If I had the map with the marks on it, it describes the land on that map and the man who gave us the opinion, gave us the value of that land naked.

Q. You don't know then now without that map?

A. No, not positively.

Q. Do you know whether or not there is bottom land west of Lewisville or east of Lewisville?

A. There is bottom land both east and west between stations.

Q. Do you know whether or not that bottom land is or is not more valuable than the hill land?

A. From opinion it is not more valuable; it is not as valuable.

Q. You would count the hill land as more valuable?

A. That is, it depends, if the hill land is under timber.

Q. In this particular district that you valued which is the most valuable?

A. The hill lands.

Q. You are positive of that?

A. I am positive of that.

150 Q. Now, in making this assessment did you take what you really counted the actual sale or market value of the land to be?

A. I did as near as we possibly could. This is for the valuation of our right of way and it is my business as an employe of the railroad company to get as much value as we possibly could on the railroad, and of course, this same property was valued by the Interstate Commerce Commission also on the same lines as ours and the grand totals were very close. It is not a hard matter to make values of land in Lafayette County.

Q. I think I misunderstood you when you said how many acres of land, right of way, in the road district?

A. We valued only the adjoining land and I placed a unit value on that land in zones.

Q. You misunderstand me. You gave the total acreage of land outside of the towns as 221.37 acres.

A. That is what the computer figured for me.

Q. That is correct?

A. Yes, sir.

Q. Does that include the acreage on the Shreveport branch that is included in this road district?

A. No, sir.

Q. What is the acreage on the Shreveport branch that is included in this road district?

A. Yes, there is some acreage in here. I think that was included in this district.

Q. That is included in this 221 acres?

A. 221.37 acres.

Q. And you assessed the total value at \$2,359.68?

A. Yes.

Q. That would be slightly over \$10.00 per acre?

A. An average.

Q. Now, how many acres of land is there in the towns?

A. Acres in the town. We figured that by the square foot. That could be quickly computed.

Q. Turn it into acres.

A. The acres in town as figured by the acre would be 3.3 acres at Buckner. Now the towns as a rule we figured the square feet.

Q. Can you tell the total valuation you made of the lands in the town of Lewisville?

A. Yes, sir.

Q. What is it?

A. \$11,148.00. That is in five zones.

Q. Just what do you mean by zones. I don't understand that.

A. A zone is a continuous stretch of land of the railroad right of way as may come under the similar influence of naked adjoining lands. Or in towns, for instance, the zones are about a block. As in Lewisville, for instance, you start into the little dwellings and then you come to a little better zone, and then on the other side that is acreage.

151 Q. Now, what did you value the land in the highest zone that joined the depot at Lewisville?

A. Four cents a square foot. \$300.00 an average lot.

Q. Do you know the value of those lots right opposite the depot at Lewisville as naked lots?

A. Only by opinion.

Q. What is the value of those lots, as lots?

A. \$500, naked, average in the business part.

Q. Do you really think that in 1915 you could have bought those lots at an average of \$500.00 as naked lots?

A. Well, according to the men of the town.

Q. I am asking what you think.

A. There were not any vacant lots, but I wasn't buying lots; I was getting opinions as to the best value.

Q. Land is worth what it will sell for?

A. As a rule.

Q. Do you think at that time these lots adjoining the depot could have been bought for \$500.00?

A. Do you mean the lots on the north side?

Q. The average?

A. \$500.00 is what the best business men told me they were worth.

Q. Describe the limits of that zone at Lewisville.

A. From Spruce Street to Chestnut Street.

Q. That is one block, is it?

A. Yes, sir.

Q. The block where the bricks are immediately opposite the depot?

A. Yes, sir.

Q. And you give as your best opinion that those were worth only \$500.00 in 1915?

A. Yes.

Q. Do you know whether or not any change has taken place in values in this road district in good property since 1915, of your own knowledge?

A. In good property of my own knowledge, I do not. I do not know of any. If values have enhanced in proportion to the northern country lands, they are supposed to have increased twenty-five per cent. That is about the average since 1915.

Q. But you know nothing about what increase has taken place in this particular property?

A. I am only assuming that land values all over the country have increased considerable.

Q. Do you of your own knowledge know whether city properties have increased or decreased since 1915 in this road district?

A. I don't think so, Judge.

Q. You know nothing about any changes during the last four years?

A. None whatever.

Q. How long were you occupied in making the assessment of the town property in Lewisville?

152 A. Possibly two days; [probably] I was there two days.

Q. Do you know how long you were?

A. A day and a half or two days. We stayed there a night.

Q. Then it took you approximately the same length of time to assess the town property that it did the country property?

A. We averaged that generally; as I said, in this section the lands are not valuable; we averaged fifty to sixty miles a month, including the towns, is what I said. That is considered a fair month's work.

Redirect examination.

By Mr. Turney:

Mr. Turney: This statement we have been referring to containing the values of these lands, I want to offer that, if the court please. I want to offer it as a whole.

The Court: You mean as an exhibit?

Mr. Moore: Your Honor, I object to that. We have brought out what the witness knows about it, but to have that introduced as an exhibit we would have the right, and of necessity would have, to go into each item. The witness has it there to refresh his memory. If there are any points that have not been brought out I can't see where we gain anything, and for that reason I object.

Mr. Turney: The Cross-examination has taken such a turn that I would deem it necessary to go through here and put this in item by item.

The Court: I don't see any objection to putting that in as an ex-

hibit. It simply, as I understand it, tabulates what the witness has already stated, and his oral examination explains it. It seems to me that that would be competent as an exhibit.

Mr. Moore: It tabulates part that the witness has stated, but there is much more there that the witness has stated nothing whatever about. Here are two closely written pages.

The Court: Very well, you may have time to examine it, and it may be offered later.

Mr. Turney: Mr. Fleck, with regard to the lands lying east and west of Lewisville—Lewisville is in what zone?

A. Zone 26.

Q. Is Zone 27 west or east of Lewisville?

A. 27 is west.

153 Q. What valuation did you put on the lands in Red River bottom lying west of mile post 395?

A. From \$20.00 to \$30.00 an acre, that is naked land. That ran from a mile post 395 to about 398.

Q. Those are the high lands next to the river?

A. Yes, sir. Some of the farmers say this land is \$30.00 an acre and they don't consider the improvements. But we have instructions to consider the improvements. Now the improvements on this 80 say, for instance, is not very much, a- \$1,000.00. It can't take much for buildings to make a thousand dollars. We must take the naked lands, and this valuation was made for the purpose of getting as good a value as we possibly could on the right of way.

Q. Why?

A. It is the valuation of our railroad and we were ambitious to get as much value as possible.

Q. Why was the road being valued?

A. The interstate Commerce Commission was making the valuation of our road to ascertain the value.

Q. For rate making purposes?

A. I don't know what.

Q. You were representing the railway?

A. Yes, sir.

Recross-examination.

By Mr. Moore:

Q. Were you trying to get the real value of that land?

A. I tried to, as near as I could.

Q. And in getting that you say you tried to get just as good adjoining value?

A. Just as good as possible.

Q. Did you use the highest assessed zone you had, say between mile post 395 and 398?

A. Yes.

Q. Do you not know that mile post 399 is within the corporate limits of Lewisville, near the water tank?

A. I don't remember.

Q. You refer and see if I am mistaken.

A. I would remember from my map. We don't go by mile posts; we go by chain stations.

Q. You don't know where these mile posts are, then?

A. Not unless I had the map. These are the town maps. I have not got the valuation map.

Q. Is that 390 there in Lewisville?

A. Yes, sir; that is between the town and the corporate limits. That is where we go to Shreveport.

Witness excused.

54 J. M. BRASHEAR, a witness on behalf of the St. Louis Southwestern Railway Company, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gaughan:

Q. Mr. Brashear, where do you live?

A. Little Rock.

Q. In the year 1917 was there an improved highway reaching from Little Rock to Pine Bluff that ran practically parallel with the Iron Mountain railroad between those two points?

A. Well, what was known as the Dolly Way had been constructed up to 1917 about to the county line in Jefferson County, and Pulaski Road Improvement district was formed in 1916 and was built in 1917 and 1918.

Q. Was that road between Pine Bluff and Little Rock in proper condition, good condition for travel by automobiles and trucks during that summer of 1917?

A. One end of it was; the Dollyway end of it was complete; the other end of it was a gravel way and the hauling of logs had ground it out in bad shape.

Q. Were you employed by the Iron Mountain Railway Company in order to ascertain the amount of automobile travel that was being done by that road?

A. Yes, sir.

Q. Do you know for what purpose this information was sought by the Iron Mountain railroad?

A. As I understood it they made an assessment upon them that had been excessive, and what they figured was this, that they were losing big business already, and to build a continuous driveway it would divert more of their traffic over this drive-way and take it from the passenger service.

Q. And you were employed, as I understand it, to find out what the travel was along this highway between Little Rock and Pine Bluff during a certain period of time?

A. Yes, sir.

Q. And the purpose of getting this information was to see how

many passengers were traveling along the highway which otherwise would travel by the railroad?

A. Yes, sir.

Q. Please tell the jury how you made the investigation.

A. We were instructed to stay on the pike from 7 a. m. until 7 p. m. for 90 days. We were to check every car that passed over the line by number. We used two directions, north and south. We checked each car going south, for instance, by number. For instance at 7:10 A. M., I reported it out of Bell at the end of 155 the car line. We had a man at Farrel that had to take this number if it passed there. The man at the crossing of the Cotton Belt railway in Pine Bluff had to take this number. At the end of the week we had a north and south number. We allowed a driver for each car; if we had seven passengers we counted it six; and we sent these reports in at the end of the week. They accumulated in the office until we stayed there for 90 days and the three of us came in and compiled these reports with a blue pencil check. If the man at Farrel did not show it we cut out the number. If it showed in Farrel we counted the number. We didn't count the short haul.

Q. In other words you counted nobody except those that went entirely through?

A. We didn't compile a car that didn't show three times. Of course they had to show an hour and fifty minutes gap; sometimes they were eight and ten hours. Ordinarily we would get them in two hours. We could run it down and catch that fellow into Pine Bluff in two hours. And then we had a schedule of eight passenger cars a day that made two round trips a day.

Q. Did you keep them separate from the automobiles?

A. Yes, sir; we got the total number of passengers through at so much a ticket, and then we divided the jitneys, what we called the licensed jitneys made the chief travel, and compiled it in number of cars, numbers of passengers, and at so much a passenger, how much that revenue amounted to.

Q. Have you got your figures?

A. I have the compiled figures; I have the statements of the three. Sheet No. 1 shows southbound, northbound, from June 6 to July 6, inclusive, shows a total of 2,675 passengers carried through at a revenue of \$3,531.00. The number of jitneys, licensed jitneys on schedule, table 1 and 2, for the month of June and the six days of July, shows 613 passengers through, or \$809.16.

Q. Let me understand that. You say that it shows a revenue of so many dollars. Do you mean by that that is what would have been the railroad fare if these people had ridden on the railroad, that would have been the amount of fare they would have paid?

A. The first thirty days, \$3,531.00; of that amount \$809.16 is for the licensed jitneys.

Q. The first month what would have been the revenue of the total number of people?

A. \$3,531.00

Q. That includes the jitneys?

A. That included everybody that was checked three times.

156 Q. Now, if I understand you correctly, there were some people engaged in running regular schedule cars?

A. Yes, sir.

Q. Now, take the next month.

The Court: You said something about making a deduction from the total amount of fares.

A. Total amount of \$3,531.00, of that amount \$809.16 was for licensed jitneys. That was the first thirty days. The second month we showed 1,953 passengers all the way, from north bound and south bound at a revenue of \$2,577.96. Of that amount 664 passengers were carried north and south by the jitneys, at a revenue of \$876.44.

Q. What did the jitneys charge?

A. They charged a dollar and a half.

Q. Did the people ride in those jitneys and pay a dollar and a half rather than ride on the railroad and pay less?

A. Yes, sir. Well, I asked lots of them why they did it. They said we men work Pine Bluff and leave any hour in the day we want to; we will drop off at Farrel, Woodson or Redfield, drop off at one place and catch them at another. In the run of a day they can work the forty-two miles and spend the night in Pine Bluff or catch a jitney back. There is a schedule of a little over an hour apart that you can ride over that.

Q. Now, Mr. Brashear, what was it the third month?

A. The third month included September 6th, 1,453 passengers, round trip, at a revenue loss of \$1,917.96. The jitneys handled 396 passengers at a revenue of \$578.40.

Q. Is that in addition?

A. No, that is deducted from the total.

Q. Have you got the total amount for the three months?

A. No, sir, not added; but the three added together will amount to \$8,026.92.

Q. That is for 12 hours a day for 90 days?

A. Yes, sir.

Q. According to my addition for these three months the amount of people that made the through trip from Little Rock to Pine Bluff by Automobile or jitney, taking one person out of each car, would have produced a revenue of train service of \$8,026.92.

A. Yes, sir; that is at the ticket fare of \$1.32.

Q. Did you keep any account of freight that moved upon the public highway?

157 A. Yes, sir; the only thing we could do was to estimate the tonnage. If we had a truck loaded with oil we could only estimate it as a two ton truck. The wholesale people and the oil people and the Coco-Cola people had a gentlemen's agreement to meet at the half way point. Pine Bluff would work to a certain point and Little Rock would work to a certain point. I was down

to see some merchants and asked them why they patronized the trucks in preference to the railroad company. The trucks would run on an average of twice a week; they would bring the oil and they knew what their schedule was, and how much to order.

Q. I would like you to tell the jury whether that truck business amounted to considerable or whether it was a small affair.

A. I would judge there was 30 trucks a day passed my station with merchandise. We didn't compile it because we couldn't show them through.

Q. Have you been over that road often?

A. Yes, sir.

Q. I mean the public highway.

A. Yes, sir.

Cross-examination.

By Mr. Moore:

Q. How long have you been acquainted with the country through which the highway is built?

A. Fifteen years.

Q. What has been the result of the highway between Little Rock and Pine Bluff so far as development is concerned?

A. Very little.

Q. Are there various stores or settlements that these trucks would carry goods to that are not on the railroad station?

A. No, sir; there isn't any.

Q. What has been the development of that region in so far as the opening of agricultural lands is concerned from the building of that road way?

A. I do not believe there is over ten per cent to-day, in cultivation to-day, between the two towns. I don't know how much of that, very little of that in the last fifteen years. There is so little of it—it is a poor section of country—there is a saw mill in there that hauled considerable lumber into Little Rock. I do not think there is more than ten per cent of it open to-day. I mean to say in a radius of a few miles of the pike.

Q. Then practically all of the traffic that goes originates and ends in the two cities of Pine Bluff and Little Rock?

A. With the exception of what we call the every week peddler that rides from station to station in his car that used to ride on the train, the heavy traffic is between the two towns over this pike.

158 Q. Have you been in a position to know whether or not during this period of time to which you have referred, June, July and August, 1917, the traffic on the railroad between these towns was less or greater than it was during the same months in the preceding year?

A. I was on the train during the 90 days. I have been over the road for the last 15 years. I was nine years working the retail trade. I worked 9 years in retail trade in a buggy. For the last six years I have covered the wholesale trade. The local travel has gone from

railroad. The men I met ten years ago, the prune-peddlers, of course, they are the fellows I always saw. I associated with those fellows. I never see those fellows any more. I talk with them and they say we ride the car. I do not get in touch with those fellows any more.

Q. Then do you know whether the Iron Mountain between Pine Bluff and Little Rock is or is not to-day hauling as many passengers as it did about three or four years ago?

A. I do not think so.

Q. You would not state so?

A. No, sir. I don't know but my observation is that they are not.

Q. In the two towns that feed the Iron Mountain railroad and that feed the jitneys and the automobiles that you checked, Little Rock and Pine Bluff, there has been a very enormous increase of population and traffic within the last three years, has there not?

A. Well, at the beginning of this check while I was checking Camp Pike was established. Since then it has been heavier. We could hardly feel the difference up to that time. Now the whole month I got considerable foreign cars, that is foreign licenses, and we designated all foreign cars. We put Louisiana or Mississippi numbers. We always stated the State that the license covered. That was increased, of course, by the enormous increase at Camp Pike.

Q. At Little Rock?

A. Yes, sir.

Q. But has there been a very great increase moving out of Pine Bluff due to normal conditions since 1917?

A. I don't know.

Q. You have mentioned these trucks that were going through carrying freight that moved half-way you say, by this gentleman's agreement?

A. Yes, sir.

Q. All of that freight practically originated in Little Rock or Pine Bluff, did it not, that came out on trucks?

A. You mean manufactured there?

Q. No, I mean it started on the trucks.

A. Oh, yes, it started from the two points.

Q. Now practically all the material whether it was oil, coca-cola or these groceries that you have mentioned that went out on the truck, came into Little Rock or Pine Bluff from outside towns?

A. With the exception of ice cream. Of course, groceries and oil and furniture. There was considerable furniture delivered over those lines.

Q. Then the traffic that went out there was local traffic that you refer to?

A. Yes, sir.

Q. And all that local traffic had come into Little Rock or Pine Bluff on some of these roads and they received the long haul?

A. Most of the furniture was manufactured in Little Rock.

Q. But the material to manufacture those things comes into Little Rock over the roads?

A. A percentage of it, that is the raw material.

Q. Then the roads did receive the long haul either in the building or in the manufactured product of most of this stuff unless it was something like ice cream [-nd] groceries?

A. Well, oil and groceries I would say they would.

Q. Do you know, or do you not know whether the local traffic or through traffic is most profitable to railroads?

A. Well, I don't know. I do in an express way, I don't know in freight. Of course, in express we look to the long haul.

Q. I notice this commenced at \$3,531.00 in June and dropped off to \$1,917.00 in August. How do you account for that slump in the amount of money estimated that would be paid for fares during that time?

A. I don't know.

Q. Of course, the reason of it was fewer people traveling?

A. Yes, sir.

Q. Now you do know during the wet season, or the winter seasons how they get out there, do you not?

A. Yes, sir.

Q. During that season practically all of this traffic goes over the railroad that moves over the Dollyway and the improved pike during the dry season, does it not?

A. I don't know. The jitneys run the year round never change their schedule.

Q. But they do not carry the number of passengers?

A. I don't know.

Q. Don't the number of jitneys diminish most materially?

A. No, sir, never change.

160 Q. Well, from what you know of that is it not your opinion that the majority of this traffic during the wet season goes by rail?

A. No, sir, I don't think so.

Q. Do the heavy trucks keep up their deliveries during the bad seasons?

A. Yes, sir, over the good pike.

Q. Over that road as a whole?

A. It is completed now you know. At that time we didn't have the road completed.

Redirect examination.

By Mr. Gaughan:

Q. Mr. Brashear, of course you can't tell what per cent of the freight delivered along this highway in trucks was manufactured in these two cities and what proportion shipped in from afar.

A. No, sir.

Q. You know that a large part of it was manufactured in these two towns?

A. Yes, sir, I would think it was.

Recross-examination.

By Mr. Moore:

Q. You stated though, what I presume was common knowledge, that of that manufactured a very great proportion of the raw material had to be shipped into Little Rock to be manufactured?

A. Our furniture is made from lumber cut in Pulaski County and hauled in there.

Q. Most of it is cut right in the county?

A. Yes, sir.

Q. But outside of the furniture business, would you not state that most of the raw material for this manufactured product was shipped over the railroads?

A. Well, I say groceries and oil. We have no oil products or groceries.

Q. You haven't any hardware products there, have you?

A. No, sir.

Q. You haven't any drugs?

A. No, sir.

Redirect examination.

By Mr. Gaughan:

Q. Take that furniture business, that is a big business?

A. They haul an awful lot of furniture over that road.

Q. Now as a matter of fact that furniture was made of gum lumber and the railroads have hauled none of it either in or

A. Possibly it would have the varnish and nails. Now this year I've had occasion since last year I have been working Arkansas in another line and I just want to mention the fact that truck business at Lonoke, hearing the witnesses on yesterday go through the goods proposition there, I worked in the interest of the ice cream business and the Government inspector was after the ice cream empties and the condition they were sent back to Camp Pike. And they had to send them in by a certain time. On my first trip around we had an awful lot of those empties. The first time I ever saw a truck on it. I couldn't get a drayman to haul at Lonoke, and he said I would give them to him he would haul them to the factory and deliver them that night; whereas I would have had to haul to the express office, get them over to Little Rock by piece meal, and those empties would get in to Little Rock in two or three days by express; and if we didn't get after the express company we wouldn't get them in. So we naturally threw all we could to the trucks. We would get them back in three or four hours. Same way with Bevo. Bevo, while shipped in there is hauled out locally.

Q. From your experience and observation, is it your experience that the automobile and truck business is increasing or diminishing?

A. Increasing very rapidly.

Q. In fact the more good roads you have the more they are used

A. Yes, sir.

Q. That has been your observation in places where they have these good roads?

A. I have noticed that more particularly in the last three years since I made a study of the pike business in checking these cars two years ago.

Recross-examination.

By Mr. Moore:

Q. What is the distance approximately that these trucks go out?

A. On the Pine Bluff run, as I said, they have a gentlemen's agreement that they meet on that dividing line. I believe they do allow Little Rock to go to Redfield on account of a heavier trading point, but they have to go about 25 miles to get to Redfield out of Little Rock, but Pine Bluff only comes 20 miles.

Q. Taking the other direction, towards Lonoke, isn't the distance somewhere between 20 and 25 miles?

A. No, sir; they make as far down as Hayden and Carlisle, hauling produce and delivering groceries.

Q. How far is it?

A. It is possibly 40 miles; 35 or 40 miles.

Q. Now, Hayden and Carlisle are the center of this milk industry you have spoken of?

A. Yes, sir.

Q. Hasn't that milk industry become very enormous in the last few years?

A. Yes, sir.

Q. You spoke about one reason that you couldn't ship your containers back to Little Rock because the milk trains were coming in so heavy?

A. You couldn't get any room to ship them. They have what they call the milk train and the regular passenger train following does not stop. They will possibly handle 150 of these ten gallon *stands*. It takes up lots of room and they don't handle the milk by trucks. They do butter. The Government would not let them haul in truck.

Q. This milk industry has grown up in the last three or four years?

A. Yes, sir.

Mr. Gaughan: You mean it has increased in the last three or four years?

A. Yes, it has increased.

Witness excused.

R. CARNAHAN, a witness on behalf of St. Louis Southwestern Railway Company, being first duly sworn, testified as follows:

Direct examination.

By Mr. Wooldridge:

Q. What is your name?

A. R. Carnahan.

Q. Where do you live?

A. Pine Bluff, Arkansas.

Q. How long have you lived there?

A. Five years.

Q. What business have you been engaged in during those five years?

163 A. Been engaged in the lumber business, and timber business practically.

Q. Have you landed interests in Jefferson County and Lonoke County?

A. Yes, sir.

Q. To what extent, Mr. Carnahan, in the two counties?

A. About 40,000 acres. I don't mean that I own the 40,000 acres individually, but I control it, and am president and general manager of the companies that do own it.

Q. Do you frequently go to Lonoke County?

A. Very frequently, visit the saw mill in Lonoke County.

Q. Where is your saw mill?

A. On the Cotton Belt Railroad between England and Lutz.

Q. Do you know about how many pike roads they have in Jefferson and Lonoke?

A. They have nine that I know of in Lonoke, and fifteen in Jefferson. I am commissioner in road district 15 in Jefferson County and also road district No. 9 in Lonoke County. There has been a great many pike roads built in Jefferson and Lonoke in the last few years.

Q. Do any of these roads parallel any of the railroads?

A. Yes, sir.

Q. Do they have a pike from England to Little Rock?

A. Yes, sir. The Pike from England to Little Rock parallels the railroad all the way.

Q. Do they have a pike road from England to Lonoke?

A. Yes, sir.

Q. That goes out by Coy?

A. Yes, sir.

Q. Where is Coy?

A. Six miles east of England.

Q. Road District No. 9 that you speak of, where will that run when it is completed?

A. It will run parallel with the Cotton Belt for a distance of approximately 15 miles.

Q. What has been the increase, if any, in the last four or five years in the automobile traffic?

A. I would say in Jefferson County that the increase in automobile and truck traffic in the last five years has increased 500 per cent. is five times now what it was five years ago.

Q. What is the cause of that increase, Mr. Carnahan?

A. Good roads.

Q. Before we had any good roads there in these counties, is it not a fact that automobiles were used very little?

A. Very little.

164 Q. Were the trucks used any before the good roads?

A. No trucks that I remember before the good roads.

Q. Out in the country?

A. Out in the country.

Q. Do you know whether any of the freight was hauled or delivered over the pikes?

A. Freight hauled in every direction from Pine Bluff on the trucks.

Q. What counties do those trucks go to?

A. Lonoke County, and I don't know the names of those counties that join, all of them; I don't know what they are; every direction in which we have a pike road.

Q. What has been the effect of these trucks as to traffic, say over in the vicinity of England to Little Rock and Pine Bluff?

A. It has lessened the railroad traffic.

Q. To what extent do the passengers or people that go in automobiles if the pikes had not been there would use the trains?

A. There is very few people travel on the train now where they have automobiles and where they have a pike. I don't think I go on the train from home unless it is very bad.

Q. Do you go to Lonoke County in your automobile?

A. Yes, sir.

Q. Could you go in your automobile without the pike road?

A. No, sir.

Q. How would you have gone?

A. Had to have gone on the train and lost a day's time each time. It is a saving of time. They save time and get out as much work now in a day as they could in three or four before.

Q. What has been the effect in the increased valuation of land by reason of the building of these pikes?

A. I would say that farm lands in Lonoke and Jefferson where these pikes have been built, have increased twenty-five to fifty dollars.

Q. That is in bottom lands?

A. Yes, sir.

Q. What is the character of Jefferson County?

A. Practically all bottom land.

Q. What part of Lonoke County is of similar character?

A. The part south of Lonoke where these roads go. I am only speaking from my personal knowledge of the country that I go over on the road.

Q. What is the character of the country where England is situated?

165 A. It is one of the best agricultural localities in the State of Arkansas in my opinion.

Q. Mr. Carnahan, what effect would you say as to the increase of the valuation of the railroad line by reason of the building of a pike, if it parallels it or otherwise?

A. I don't believe a railroad is benefitted by a pike road paralleling it. The only benefit it could possibly get would be the same benefit that my land gets, if the railroad was removed. The land would be in close proximity, which they own, to the pike, and the land in close proximity to the pike is largely benefitted no matter who owns it.

Q. Is it your opinion that there would be no increase except to the right of way that it occupies?

A. That is all.

Q. To what extent would that be?

A. Just the same as the other land if the railroad was removed. In my case I couldn't build my pike road without the railroad.

Q. You mean to say if it were not for the railroad you couldn't build a pike on this road improvement district No. 9?

A. No, sir.

Q. What would you say as to increased operations by reason of the pike?

A. I think it would lessen the traffic.

Q. Do you think it would be of any value to the steel rails, ties and the road bed itself?

A. It couldn't possibly be in my opinion.

Q. You say you are one of the commissioners of road improvement district No. 9?

A. Yes, sir; in Lonoke County, and District 15 in Jefferson.

Q. Do you have to do, or know, of the assessments of the benefits against the railroad in District No. 9?

A. Yes, sir.

Q. You say you had to do or know of the assessments against the railroad in Road Improvement District No. 9?

A. Yes, sir.

Q. What was that assessment?

A. \$225.00 a mile, approximately that.

Q. How did you arrive at that?

A. We estimated the acreage that the railroad owned per mile in the district, and assessed it like we did my land. That included a large per cent of the land that was in close proximity to the road.

Q. Then you took the same benefits that were assessed against the adjoining lands of the railroad and applied that to the right of way of the railroad?

A. Yes, sir.

Q. And assessed it by the mile at so much?

166 A. Yes, sir.

Q. Do you know to what extent that basis is used in Jefferson and Lonoke?

A. That system is used in Jefferson and Lonoke on all the roads that I have been interested in where I have land, and the same is

true in Lonoke County. I have 4,000 acres in Lonoke County that the road goes through.

Q. Is it your opinion that the building of a pike instead of giving business to the railroad will take business from it?

A. I think a pike that parallels a railroad, no matter how far it goes, will take away from the railroad, lessen its traffic and its revenue, in my opinion.

Q. The only kind of road that benefits the railroad would be one that brings in to the railroad something that could not come otherwise?

A. Yes, sir.

Q. Even though the road from Little Rock to England does not parallel the railroad all the way, does that take business that it would otherwise get?

A. Yes, it does.

Q. If there was no pike from England to Lonoke, how would the people get to Lonoke?

A. Have to go to Little Rock and wait there and make connection.

Q. How do they go now?

A. In automobiles straight through.

Q. Over the pike?

A. Over the pike.

Q. What effect will road improvement district No. 9 have other than that? Is there any other system connecting with it that goes to Stuttgart?

A. There is other districts organized; that is, we will have a road from England to Stuttgart when the system is completed.

Q. And when the system is completed you will have one from Hazen to Stuttgart?

A. That is my understanding.

Q. What effect will that have on the business of the railroad?

A. This pike will lessen the traffic; even the managers at the mill are getting machines on suspicion, as we call it.

Q. How do they get now from England to Little Rock?

A. On the Cotton Belt railroad. It is practically impossible without the pike in a large season of the year.

Q. How will it be when the pike is completed?

A. It will be all right if we get what we hope to get.

Q. Is it your information that the building of that pike will have the same effect on the railroad that these pikes that are already built in Jefferson and Lonoke?

167 A. Yes, sir; I am basing my opinion by my experience and knowledge, watching the operations of the pike and the traffic of the railroad.

Q. Do you know whether they have a road improvement district No. 14?

A. That has been organized, yes, sir.

Q. What section of Jefferson County will that cover?

A. It will cover the section on the east side of the river.

Q. Will that give the vicinity of England in Jefferson County a pike from that section of England and surrounding territory to Pine Bluff?

A. When we get Road District 15 and Road District 14 complete, the road systems which we have laid out, I think there is more than a hundred miles of pike roads in these two Districts, and when we get them all connected and finished we will have a complete system of pikes on that side of the river.

Q. What effect will that have on the travel and local freight business on the railroad?

A. It will have the effect to lessen the travel.

Q. Improvement District No. 15 is now being built?

A. Yes, sir.

Q. Where does that run?

A. From Pine Bluff to Humphrey on the Cotton Belt. It parallels the Cotton Belt a good deal of the way from Pine Bluff to Humphrey and then joins the Lonoke County road about four miles south of Coy.

Q. They have a pike from Coleman to Humphrey near Stuttgart?

A. Yes.

Q. Then when No. 15 is completed you will practically have a pike around by the free bridge to Stuttgart?

A. Yes, and from Stuttgart to England. Three or four counties will be connected up with pike roads when we complete the improvements now under construction.

Cross-examination.

By Mr. Moore:

Q. What corporation is it that you are president of that owns 10,000 acres?

A. I am president of the Kentark; it is a Kentucky corporation, I am from Kentucky, and it owns practically 25,000 acres.

Q. What is the other corporation?

A. The New Era Land Company.

Q. Are those companies operating mills?

A. Yes, sir.

Q. Hard wood or pine?

A. Hard wood.

168 Q. What counties are those timber lands situated in?

A. Lonoke, Jefferson and Lincoln.

Q. How long have you lived at Pine Bluff?

A. Five years.

Q. You have been over these lands through those counties repeatedly?

A. Yes, sir.

Q. Did I understand you to say that you did not know the names of the counties that joined Jefferson County?

A. I am talking about the hills on the west. I am not acquainted in those counties. It is just those locally where I am operating that I am acquainted.

Q. And you have been there about five years?

A. Yes, sir.

Q. Have you been living there continuously for the last five years?

A. Yes.

Q. You say those lands have advanced from \$25.00 to \$50.00 per acre?

A. That is the land in close proximity to those pikes.

Q. And you meant that that \$25.00 advance is due to the building of the pike?

A. Largely so, because it was land of a nature of which you could hardly get to without a pike.

Q. And the pike has made that advance?

A. The general advance of the country of course would be incident

Q. Why is it that the building of that pike would increase the lands joining you?

A. From the fact that you can get to that land, and otherwise you couldn't. Nobody wants to buy land where they cannot get to it without they ride a mule.

Q. Then no one buys that land along the pike unless they clear it up?

A. They have got to clear it up and put it to work or have considerable income on the outside.

Q. Then, though the road brought a large part of the increase, has not the road and these other matters you have mentioned caused the land to be cleared and put into cultivation, and thereby increased the value of the wild lands?

A. The lands in close proximity to the pike were largely cleared on the west side of the Arkansas when I came down. There is where the first pike was built. This land has advanced \$50.00 an acre. On the road running to Little Rock from Pine Bluff, a distance of 50 miles, I do not believe there has been a one per cent advance in clearing on that road. It is a poor pine country, or largely
169 so, and there is very little improvement on that road; but I hope to get my unimproved land working when we build these roads.

Q. Throughout this bottom land that you have mentioned where most of this lies there has been enormous development and activity putting lands in cultivation.

A. There hasn't been yet, but we hope for that state.

Q. You say these roads are in an incomplete state yet, but in your opinion all of that land will have to go to work either for the man that now owns it or he will have to sell it to the man who will put it in?

A. That is my contention.

Q. With the tax on that land a man has to be very wealthy and willing to throw money away, or has to put it to work?

A. Yes, sir.

Q. Then you think as soon as these roads are completed within a reasonable time that area will come under the plow?

A. I think so, and will enhance in value fifty per cent in future. I am getting twenty dollars more for my land than I was two years ago.

Q. These two districts that you mentioned that you were assessor for, that the land has been assessed as naked land, as naked land according to the zone?

A. We assessed our land at \$15.00 an acre the first half mile, and the next half mile \$12.00. We put two zones in the first mile, \$15.00 per acre benefit. We estimate so many acres per mile and give it the same assessment.

Q. You think for assessing land the zone system is the only system?

A. I think so.

Q. In making that assessment you took all the land inside of a certain zone, regardless of its improvements?

A. Yes, sir. We just laid the zones down and assessed it flat.

Q. Now, on this railroad property that goes through that land there is a dump thrown up on which ties are placed, and there are ditches on each side from which the earth came to build that dump?

A. Yes, sir.

Q. Except for its purpose as a right of way to run a railroad over, or dirt road, or tramway, as now situated that land [was] practically no value, has it?

A. Very little value.

Q. If the ties and rails were removed with the condition that it is in, it would be worth nothing for agricultural purposes?

A. Oh, yes, you see the dump takes up only a small part of the right of way.

Q. The right of way is 100 feet wide?

170 A. Yes, most places; some places 150 feet.

Q. The ties are eight feet long?

A. Yes, sir.

Q. And the dump comes out four feet on each side of the ties?

A. I doubt if it is that wide.

Q. The excavation for the dump leaves a ditch on each side?

If a man were going to try to plow it he would get about two long rows.

A. No, it is good land. If it was mine I would flatten it out. All you would have to do would be to take the same dirt that came out and put in the ditches and go on.

Q. It costs a good deal to move dirt?

A. Yes, it likely would. But if it was my land I would try to fix it, and especially if it was as close to the road as mine is.

Q. You mentioned so many people buying automobiles in the last few years?

A. Yes, sir.

Q. And I believe you stated a good many bought automobiles just when they thought the road was coming?

A. Yes, sir.

Q. When you take into consideration the automobile traffic over these roads, is not the majority of that traffic probably, not what you call joy riding, but riding for pleasure rather than for business?

A. Largely so, especially around the towns. But there is hardly

a business man in our locality that don't have a car for his business use now, especially if he is a fellow whose time is worth money.

Q. So, do you not think that a great proportion of this movement of vehicles and people over the road is for pleasure and would not have gone on the railroad even without the roads there?

A. It might be, and to a certain extent is, but there is lots of people travel on railroads.

Q. What is the distance between England and Lonoke?

A. Twenty-five miles.

Q. Even before the roads were built, if the roads were at all passable a man could save time by riding a horse or going through in a buggy rather than making that long circuit around and waiting on trains.

A. It goes through a bottom, a lot of it I doubt if you could go in a buggy or hardly horseback during winter time.

Q. You have referred to this traffic that moves from Pine Bluff over the road and used the term "local traffic."

A. Yes.

Q. That is business that originates at the wholesale house, the ice cream manufacturers, and business of that kind, and goes out by truck to these smaller towns?

A. Yes, sir.

171 Q. With this increase that you say will come because the land is put in cultivation because of the tax, there will be an enormous increase of population in that region of a necessity?

A. We hope to have an increase in population.

Q. You haven't people enough there today to clear that land up unless you do get an increase?

A. Yes, we take them off the farms all right and clear the tracts. The darkie does most of the work up there I find.

Q. Whether darkies or white persons you will have to get some outside assistance to get that land cleared and cultivated?

A. Exactly.

Q. The crops that are raised will have to be hauled in by train in so far as through traffic is concerned; the corn, or the flour or the clothes that the people on the land use, though taken to them by local traffic from Pine Bluff, will have to come in as far as through traffic is concerned?

A. If our farming conditions ever get to what we hope, we would not have any corn or anything like that to haul in.

Q. Take articles that are not produced there, they would have to come in from other countries?

A. Certainly.

Q. And the [articles] that are raised there may or may not be handled locally by truck, but if that goes out it will be handled by rail?

A. Certainly; most of the cotton that comes to Pine Bluff now comes from trucks, but it goes out by rail.

Q. You are not interested in cotton?

A. I am interested in a furnishing business in Lincoln County, and my partners are.

Q. Your cotton doesn't go into Pine Bluff?

A. I am not sure. I have just had an interest there this last year. I don't keep up with it at all.

Q. These roads that you say could not be built without the railroad have to haul their materials in over the railroad to build them, do they not?

A. Yes, sir.

Q. That takes very great quantities of rock, gravel or cement?

A. That is what we have to have.

Q. You have to pay freight on that material at the rate established by law?

A. Yes, sir.

Witness excused.

172 FRED HUTTO, a witness on behalf of St. Louis Southwestern Railway Company, being first duly sworn, testified as follows, to wit:

Direct examination.

By Mr. Wooldridge:

Question. What is your name?

Answer. Fred Hutto.

Q. Where do you live?

A. England, Arkansas.

Q. How long have you lived there?

A. Eight years.

Q. What business have you been engaged in?

A. Real estate business.

Q. Been in that business for eight years over there?

A. Yes, sir. A little over eight years, eight years and a few months.

Q. What system of pike roads have you near England?

Mr. Moore: I am not going to object on the grounds of this being incompetent and irrelevant now, but we have had four witnesses who testified as to the pike roads at great length that are in various counties, and I presume that those witnesses have told the absolute truth about it. I don't see the advantage of piling up that same testimony that has not been refuted. I just suggest that if here are any great number of these witnesses that there is no advantage gained by bringing that in. I don't know how many pikes there are there, and I presume the witnesses have told it exactly as it is.

Mr. Wooldridge: I think, your Honor, this is the last witness on this.

The Court. Of course the matter of the number of witnesses will have to be left to the parties, however, as Mr. Moore states he is not refuting any of that testimony—

Mr. Turney: If that statement means what it sounds like, we are

willing to quit right now. If all of this testimony we have put in is not to be contradicted we are through.

Mr. Moore: I did not say that it was not to be contradicted. We took up, I don't know how many, pages locating all these roads. I haven't the slightest idea where they are. And we might admit that there are certain pikes through Jefferson and Lonoke and not [locate] them any way.

The Court: I don't understand Mr. Moore to say that he conceded the inference drawn from the testimony, but simply stated he conceded the facts that were stated.

173 Mr. Moore: If what they refer to is to say that there is a very great movement of traffic, without definitely locating the movement, moving within a radius of 25 or even 40 miles, which is the farthest any witnesses have put it, by truck or automobile, I haven't the slightest doubt, and am willing to admit it. If that is the purpose we might do away with additional witnesses about that one point. I have no other objection, your Honor.

The Court: Well, that is a question for either side to take into consideration.

Mr. Wooldridge (to the witness): What system of pike roads have you near England?

A. We have a pike running from England to Little Rock on the south of the railroad to Scott's, and then in to Little Rock. We have another road running north from England a distance of two miles, and then turning east and connecting with that road, the former road. We have another road running east and south to the Jefferson County line to connect with Road District No. 15 that is being built now in to Pine Bluff, and another road north to Lonoke, a distance of 24 or 25 miles; and another road south to the Jefferson County line, which connects with the proposed road district that goes through to the free bridge at Pine Bluff.

Q. What is the distance from Lonoke to England?

A. About 24 or 25 miles.

Q. What is the distance from England to Little Rock?

A. By road, I think something near 38 or 40 ~~mi~~ ^{mi}s, macadam road.

Q. When did you first have pikes built in Lonoke County?

A. I believe in 1912.

Q. That was your first one?

A. Yes, sir.

Q. Others been completed since that time?

A. Yes, sir; several.

Q. What has been the increase in the use of automobiles since the building of pikes?

A. I think there were only three in England when I came there eight years ago; there must be a hundred there now.

Q. There has been a big increase then, you would say?

A. Yes, sir.

Q. What effect has the building of these pikes had on the increased valuation of adjoining lands, if any?

A. Anywhere from \$25.00 to \$50.00 an acre. This, of course,

is after the land is drained. That would ap-ly to drainage and good roads.

174 Q. You have had drainage systems too, as well as pike systems?

A. Yes, sir.

Q. And your estimate of increased valuation includes the effect of drainage districts and the pikes?

A. Yes, sir.

Q. What is the character of the land in which England is situated? Is it alluvial or hilly country?

A. Alluvial, chocolate, buck shot.

Q. It is what is known as the alluvial section?

A. Yes, sir.

Q. What effect has the building of these pikes had upon the travel over the pikes other than over the railroad?

A. Well, I think there is about as many people travel to the different points now in automobiles as they do on trains. However that is just my opinion.

Q. What is the extent of travel in automobiles from England to Little Rock?

A. Well, there is a great many trucks I notice running, Mr. Woolbridge.

Q. How about the passengers going from England to Little Rock?

A. A great deal of passengers and there are a great deal of trucks.

Q. Where do those trucks come from?

A. Little Rock, mostly.

Q. What do they deliver?

A. Some of them deliver meat, oil, goods, Coca-Cola and lots of things that way.

Q. Is that an every day occurrence or just occasional?

A. Yes, sir; there is hardly a day but what there is trucks there at England from Little Rock.

Q. Before the building of the pike from England to Lonoke how did the people usually go from England to Lonoke?

A. They would go to Little Rock and catch a train out from Little Rock to Lonoke.

Q. What railroad would they go over from England to Little Rock?

A. Cotton Belt.

Q. How do they usually go now since the building of the pike?

A. Go in an automobile.

Q. They use the pike, do they?

A. Yes, sir.

Q. What would you say, Mr. Hutto, as to the effect of increased valuation of railroad by reason of the building of a pike road either parallel or in the vicinity of a railroad?

A. I think if the pike road was built from the adjacent country in to the railroad that it would help the railroad; it would develop the country and finally help the railroad in the way of freight; but I do not think that a pike road parallel with the railroad would help the railroad. I do not think it would be of any benefit to it.

Q. Would it take business from it or get it business?

A. I think it would take business from it.

Q. Both as to freight and passengers?

A. Yes, sir.

Q. Has that been your observation there since the building of these pikes?

A. Yes, sir.

Q. What benefit then could there be to a railroad and its property in the building of a pike?

A. We found that a railroad would receive no benefit. I do not think it would receive any benefit at all if the road paralleled the railroad.

Q. What about the right of way it occupies?

A. I suppose it does to the adjoining land.

Q. Would it have the same effect on the land occupied by the right of way?

A. I think so.

Q. Then, what would you say as to the benefits that should be assessed to the railroad by reason of the building of this pike?

A. I think the railroad should be assessed with a benefit just like the land adjoining.

Q. Of course, the closer the land to the road the more benefit it gets, and if you assessed adjoining lands a benefit of \$15.00 an acre, you would say the right of way should be assessed the same amount?

A. That is the way; I think that is the way, some of our districts have been assessing. In fact Mr. Carnahan is a member of the commission. I have several thousand acres of land in that district. That is the way it is assessed there I understand.

Q. Do you know about the road improvement district No. 14 that is now being organized and built?

A. I know it is being organized, but I don't know anything about the district.

Q. Do you know that will give you a pike from England to Pine Bluff?

A. Yes, sir.

Q. What will be the distance from England over that pike to Pine Bluff?

A. I think about 40 miles.

Q. What will be the effect of farmers hauling their cotton to Pine Bluff along this system of pike instead of shipping it in by the railroad?

A. Well, several of these farmers have trucks, Mr. Wooldridge, and it would be my opinion where they would get to a pike they would haul to market in trucks.

Q. Did they do that before they had any pikes?

176 A. No, sir; we have one man has a truck waiting for the pike road. That is Mr. Wright.

Q. Then how would cotton get to Pine Bluff say from Altheimer? Would it be shipped over the railroad or be hauled through the country?

A. In my opinion most of it would be hauled by trucks.

Q. I have reference before the pikes were built.

A. They hauled with mule teams to England and shipped over the railroad to the nearest station.

Cross-examination.

By Mr. Moore:

Q. You stated that your opinion is that the building of these roads must develop a country?

A. Yes, sir.

Q. Just what do you mean by develop? Do you bring more land into cultivation?

A. Yes, sir.

Q. Will it not also result in better farming and intensive farming on the land already cleared?

A. Yes, sir.

Q. Then you think the building of the roads will cause an increase in the crops raised?

A. Well, I will answer this question this way if you will let me. We have a system of drainage and when we get our system of roads that we are putting in the taxes are going to be so high the people will have to put the land in.

Q. Then, whether it is caused from the roads, in your opinion all of that land will have to go to working?

A. In a few years it will.

Q. Then you would count in the next four to six years that the majority of that land will be under plow for crops of some kind?

A. In the next ten years anyway.

Q. Now, you mention that some of these later roads had been assessed at land values?

A. Yes, sir.

Q. All of your first roads when built were assessed so much by the mile for the railroad, using the proceeds that it [benefitted] they would get out of it much higher benefits than those at present?

A. I think so. I was interested in the roads but did not own any property.

Q. You are not connected with any road districts at all?

A. No, sir.

Q. The road agent of the Cotton Belt, Mr. Goolsby, lives there at England?

A. Yes, sir.

Q. Then he lives there in Lonoke County?

A. Yes, sir.

Q. That is Mr. G. B. Goolsby.

177 A. Yes, sir.

Witness excused.

J. M. GATES, a witness on behalf of St. Louis Southwestern Railway Company, being recalled, testified as follows:

Direct examination.

By Mr. Gaughan:

Q. Judge, there were a couple of questions omitted in your former examination. Prior to the building of these roads or in the first three year period that you mentioned the other day, what would you say the area of cultivated to uncultivated lands in Lonoke County was?

A. About forty per cent in cultivation.

Q. That was in the southern part of the county where these districts were subsequently put in?

A. Yes, sir.

Q. Since those districts were put in what is the percentage?

A. About sixty-five per cent.

Q. You mean now, about twenty-five per cent have been put in cultivation?

A. About twenty-five per cent outlying have been put in cultivation.

Q. Leaving still about thirty-five per cent wild.

A. About thirty-five per cent wild.

Q. Now, regarding values, what would you say on an average as near as you can estimate the benefit to lands has been per acre by reason of these improvements in Lonoke County?

A. Accrued benefits in the neighborhood of \$50.00 an acre.

Q. That is on an average?

A. Yes, sir.

Q. That includes those accruing from all improvements?

A. From all improvements.

Q. Was that value immediate, rapid or slow in coming?

A. Well, it came pretty rapidly. From about a year after the roads were completed it just commenced to rise.

Q. And it rose very rapidly?

A. Yes, sir.

Cross-examination.

By Mr. Moore:

Q. In figuring the advance of \$50.00 per acre, do I understand that came from the building of the roads, the levees, the
178 ditches and also the general improvement that has taken place in the country; that all combined made the \$50.00 advance?

A. No, sir; the advance was due to two things. That was the drainage and the good roads.

Q. Have you levee protection or do you need levee protection?

A. Lands only on the extreme south end. I am not taking that into consideration at all.

Q. Plum Bayou Levee District does take in a part of it?

A. It takes in the extreme south end. I am not taking that in.

Q. The lands I have referred to are those I was talking to you about last night, and those are from drainage and road districts.

A. Drainage and road districts.

Q. Could you divide it equally?

A. Well, I would give the roads the larger percentage of increase, because Indian Bayou Drainage District only covered sixteen miles of territory, and does not travel the entire territory traversed by the road.

Q. That part drained could not be used at all without drainage?

A. No, sir; I should judge about 50 per cent of it could be used for tillable purposes, probably 60 per cent, but the rest was waste land.

Q. And all of it needed roads?

A. Yes, the roads; as a matter of fact, unless the roads were built in there the people could not get out of that buck shot region.

Q. In your opinion from what you have seen in the past and what you know of the tax against that land will that very rapidly be put into cultivation?

A. I presume that in the next three years at least fifteen or twenty per cent will be put in.

Q. That is of the remainder?

A. Yes, sir.

Q. And you think that is due to the roads?

A. Absolutely.

Witness excused.

179 F. D. MCGILL, a witness on behalf of St. Louis Southwestern Railway Company, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gaughan:

Q. What is your name?

A. F. D. McGill.

Q. Where do you live?

A. Lewisville, Lafayette County, Arkansas.

Q. How long have you lived at Lewisville?

A. Eighteen years.

Q. Before you lived there you lived in Ouachita County?

A. Yes, sir.

Q. And used to live at Camden?

A. Yes, sir.

Q. Are you a brother of Irvin McGill, Ouachita County?

A. Yes, sir.

Q. What connection have you had if any with road improvement districts?

A. I am, or was, one of the assessors of the Lafayette County District No. 1, Road District, running from Bradley to Walnut Hill into Red River Bottom.

Q. That was the first road district established in Lafayette County, was it not?

A. Yes, sir.

Q. And you are one of the assessors of that road district?

A. Yes, sir.

Q. I wish you would explain to the jury as near as you can just where that road district was located, the direction it extended from the Cotton Belt and the character of [country] it was built through.

A. It starts east of Bradley just a few miles, a mile and a half or two miles in a flat country, flat crawfishy, sandy land; it crosses the Cotton Belt railroad in the town of Bradley running due west, thence to Walnut Hill, and continues due west to Red River bottom.

Q. Did it go to the Red River?

A. Not quite.

Q. Well, the district itself, the proposed road did not quite reach the river, but the district, the boundary of the district went to the river?

A. Yes, sir.

Q. Where did the end of the road itself go to?

A. What is known as the Disney school house in Red River bottom.

180 Q. From what part of the Cotton Belt railroad did this district extend from?

A. It crossed it at Bradley, the main line of the Shreveport-Lewisville branch.

Q. That is the main line runs from Lewisville to Shreveport?

A. Yes, sir.

Q. Did it take in Walnut Hill?

A. Yes, sir; went right through.

Q. How wide was that district?

A. We extended the zones three miles on each side, and at the end I think we extended it a little further; when we got to the end of it in the bottoms we went five or six miles.

Q. On either side?

A. Yes, sir.

Q. What part of that district was in what is known as Red River bottom?

A. I would think half of it at least was in the Red River bottom; maybe not quite so much.

Q. Has the road, which this road district was formed for building, been finished yet?

A. No, sir; I don't think they have commenced on it, but the contract, I understand, has been let.

Q. What is the character of country in near Red River that this road is built to serve?

A. It is very heavy black loam, Red River soil; some buck shot soil.

Q. This road that is to be built by this district is perpendicular to the railroad?

A. It crosses it east and west, runs a mile or two west and then stops.

Q. It doesn't parallel the railroad at all?

A. No way.

Q. Who were the other assessors?

A. J. E. Barham and J. H. Harris.

Q. The assessor on that road was a son of one of the [ass-ors] of this road in controversy here?

A. Yes, sir.

Q. Only that portion of the Cotton Belt railroad that ran across this road district was embraced in the district?

A. That is all.

Q. As a matter of fact there was only five miles of the road within this district?

A. Just five miles.

Q. And that took in the railroad property located in the town of Bradley, did it not?

181 A. Yes, sir.

Q. I will ask you to state to the jury what the assessors assessed benefits against this railroad in that district.

A. Why, we were kind of up in the air about that railroad assessment, what it should be; in fact, we were in a very receptive mood to get the railroad to say what they would give us on that road, and at the first meeting we decided there was no benefits at all to the railroad after consulting this plan followed by this other road district, and after we got down into the bottom in looking over the situation we found a territory that the people said they were hauling cotton to Doddridge, and then we decided the railroad was going to be benefitted to some extent. I think we put it at \$600.00 a mile, and we met the railroad and they offered us something less than that and we very gladly accepted it.

Q. That highway that is to be built by this road district then if I understand you, it reaches competitive territory?

A. Yes, sir.

Q. In other words, the cotton grown down on Red River could cross Red River and go to Doddridge?

A. We found it out in looking over the situation they wanted to go to Bradley, but couldn't on account of the road.

Q. So the matter was compromised by the railroad at less than you assessed it for?

A. Yes, sir; in a very short time.

Q. Now, are you familiar with the road district that is in controversy in this case?

A. Yes, sir.

Q. Does the map which I now show you show the location of the Cotton Belt Railroad to the proposed highway in the road district that is involved here, with practical correctness?

A. Yes, sir.

Q. In other words, the red line shows the proposed dirt road?

A. Yes, sir. I wasn't one of the assessors but I tried to find out. The good road leaves this road over a mile or two miles; it was all put in one zone, and at one point, right here (indicating) I always called it two miles in traveling over it, the way the road goes it seems like it is two miles from here (indicating) to the Cotton Belt Rail-

road at that point, and something very near a mile when you go over to Stamps; it makes a little swing.

Q. Mr. McGill, did you at the request of the Cotton Belt Railroad make a valuation of the lands within this district?

A. Yes, sir.

182 Q. Does that map show the valuation that you made on each section?

A. It shows the valuation as shown by the tax books as it was assessed, and then the valuation that we put on it, regardless of what it was assessed at by the County for County and State purposes.

Q. Who assisted you in making that valuation?

A. Mr. J. E. Barham.

Q. Now, this map shows the valuation of the lands in each section?

A. Yes, sir; in each section.

Q. And it also shows the assessed value per acre for State and County purposes?

A. Yes, sir; as taken from the County Tax books.

Q. Then it also shows the amount of the assessed benefits on each section?

A. Yes, sir.

Q. Now, you took that by sections?

A. Each section. We took it section by section.

Q. Some of this section you would put in one zone and part in another one?

A. Yes, sir.

Q. Did you also undertake to get the population outside of the cities and towns?

A. We did. If a man could tell us how many acres he had in cultivation, how many people living on it.

Q. I notice on Section 7 you have the letter "B" with certain figures opposite that. That means your valuation?

A. Yes, sir.

Q. Now I notice the letter "P" with a figure opposite that. Does that stand for population?

A. Yes, sir.

Q. That means the population of that section?

A. That includes everybody living on it, man, woman and child.

Q. I notice you have the letter "A."

A. Assessed value per acre of the State and County assessor, and gotten off the tax books.

Q. Then you have also the letter "B." That is benefits assessed as shown by tax books.

A. Yes, sir.

Q. You mean the benefits assessed for building the road involved in this case?

A. For building the road.

Q. Now, I see in pencil, some figures made in pencil opposite the letters "C" and "D." What does that mean?

A. That is in the cities and towns, the assessment per parcel for State and County purposes. That is on some acreage land inside of the incorporated towns of Stamps, Lewisville and Buckner.

Q. "D" acres in cultivation, not acreage?

A. Yes, sir.

Q. Did you undertake to arrive at the number of acres?

183 A. We did arrive at it. We saw the man and he would tell us how much he had in cultivation.

Q. The figures you have on the map are correct?

A. Yes, sir, to my knowledge and belief.

Mr. Gaughan: Your Honor, will we be permitted to introduce it? The Court: Let it be introduced in evidence.

(Map identified as Exhibit 6.)

Q. Mr. McGill, when you went to make the valuation of these lands and also to arrive at the population, and also the number of acres in cultivation, did you actually go on each section of this land?

A. I don't know, no, I don't think we personally got on every section, but we would go into the neighborhood. I am not so very familiar with exactly where I was. Mr. Barham seemed to know where we was better than I, but I am not positive and I think he would know whether we actually visited every section or not.

Q. You was practically on every section?

A. Up and down both sides.

Q. Were you ever in the railroad business?

A. Yes, sir.

Q. For what length of time and in what capacity?

A. I was in the employ of the Cotton Belt fifteen or eighteen years and I was with the Iron Mountain.

Q. Were you formerly agent for the Cotton Belt at Lewisville?

A. Yes, sir.

Q. How long has it been since you worked for the Cotton Belt?

A. In 1907, about twelve years ago.

Q. You have not worked for any railroad during the last twelve years?

A. No, sir.

Q. What kind of business have you been engaged in during the last twelve years?

A. Merchant part of the time and now engaged in the cotton business.

Q. You have served in the railroad business and also in the mercantile business?

A. Yes, sir.

Q. You have also represented Lafayette County?

A. Yes, sir, I was in the legislature which created the Alexander road law.

Q. But you haven't been back since you served in the legislature?

A. No, sir.

Q. Some years ago was there a part of this proposed road improved between Lewisville and Stamps?

184 A. Yes, sir, we had a splendid road from Lewisville to Stamps, graveled all the way. It wasn't graded, it had a good gravel bed on it and we could go forty miles an hour in a car.

Q. That has been worn out?

A. Yes, sir.

Q. Now during the life of that highway between Lewisville and Stamps which is intended to be followed by this road?

A. This road follows the old road exactly; it varies very little.

Q. Did you observe the course of the travel from Lewisville during the time this road was in existence?

A. Yes, sir.

Q. Before that gravel road was built between Lewisville and Stamps how did the people [usually] go from Lewisville and Stamps, how did the people usually go to Little Rock, for instance, from Lewisville?

A. The Cotton Belt and some of them went and took the Iron Mountain at Pine Bluff. When I was agent there I very seldom sold a ticket that wasn't to Pine Bluff. Some argued that they could get off at Pine Bluff and make it a little quicker by the Iron Mountain.

Q. After this highway was constructed from Lewisville to Stamps and before it was worn out, how did the people go?

A. To Hope, in fact I go that way myself every time I go, and go by the Iron Mountain.

Q. How does this proposed road district connect up with the L. & A. Railroad?

A. It [cross-] it at Stamps in the town.

Q. Where does the L. & A. go to and from?

A. From somewhere on the Mississippi River to Hope, Natchez, Mississippi.

Q. This road district now that extends from Red River to the Columbia County line crosses that railroad at practically right angles?

A. Right in Stamps, yes, sir.

Q. What per cent of the travel from Lafayette County to Little Rock now goes by way of automobile to Stamps and from there up by the L. & A. and over the Iron Mountain to Little Rock?

A. I would say from 90 to 95 per cent. Unless a man has got a pass, the Sheriff takes the prisoners around that way; he has got a pass.

Q. The ones that travel the Cotton Belt are those that have passes?

A. You can't induce anybody to go that way. I know I went with the sheriff one time and we had to go that way just because he had a pass. It is a very much quicker and better way to go the other way. You can leave Lewisville after [dinner] and go to Hope and catch No. 6 at Hope and be at Little Rock at 8. I think it is.

Q. As a matter of fact, the building of this highway would enable everybody in Lafayette County who are contiguous to this highway to make their trips to either St. Louis or Little Rock, or any other point north, enable them to make the trip without using the Cotton Belt Railroad at all?

A. Yes, sir and they do.

Q. How then, do you figure that the building of this highway

from Red River to the Columbia County line would help the Cotton Belt Railroad?

A. I can't figure that it will help them at all. It will take business away from them. It has done it under my personal knowledge, no little business, but I mean business of some little proportion has gone from them.

Q. In your opinion from a study of the situation, from your observation, this proposed highway will not benefit the Cotton Belt to any extent whatever?

A. None whatever that I can see.

Q. Now I will ask you a question with reference to the passenger business. I will ask you to state to the jury what in your opinion will be the effect of the building of this road with respect to freight traffic between Lewisville and Stamps?

A. All the local freight traffic will be hauled over the road, in fact, a great portion of it was over this dirt road, over this gravel road that we had. Business that amounted to some considerable business was done by trucks and automobiles.

Q. Well, when the highway is completed down to Red River bottom what will be the increase there?

A. It will increase. The better the road the less the railroad is going to get of the business between the two towns.

Q. Now as I understand it, the Cotton Belt has to compete with the L. & A. through its connection, for the freight business as well as the passenger business on that account?

A. Yes, sir.

Q. That is, all that territory that is tributary to what we call the main line?

A. Yes, sir.

Q. And with an up-to-date first class highway extending entirely through the county it makes the L. & A. a competitor with the Cotton Belt for all the territory that is tributary to this highway, does it not?

A. Yes, sir.

Q. Do you know of any cotton being carried in trucks from Lewisville or below Lewisville to Stamps for shipment?

A. There was two shipments in 1917. In 1918 we had none on account of this road was so you couldn't get over it. In 1917
186 we shipped, I think 50 bales went over in one week, I remember because I made the bills of lading. I attended to the shipment. It was hauled in an automobile truck from Lewisville to Stamps and put on the L. & A. platform.

Q. Which direction did it go?

A. It went to Hope. You know that was the nearest compress.

Q. Now, as a matter of fact, it could have been shipped to the Mississippi River?

A. Yes, sir, but this cotton went to Hope. I made the bills of lading.

Q. Now if it had gone the normal way it would have gone to Texarkana to the compress?

A. Yes, sir.

Q. If it had been loaded at Lewisville by the Cotton Belt it would have gone to Texarkana or Shreveport?

A. Or Pine Bluff.

Q. And if that had been done the Cotton Belt would have gotten to handle all that freight out—in other words, where the railroad starts the cotton to the compress it gets that haul out?

A. Yes, sir.

Q. That is what you call the compressing in transit rate?

A. Yes, sir.

Q. And where it is billed into a place where there is a cotton compress then it is likely to go out over that road? In other words, it goes out over the road that brings it in when the long haul comes?

A. That is correct.

Q. In your valuation of the lands within this district was your valuation put on as being the value of these lands with the road prospect, or was that the value of the lands without any prospect?

A. Without any prospect, just as it was at the time we made the estimate of the value.

Q. Mr. McGill, what are these up-lands worth that are located in this district? I mean the lands outside of Red River bottom worth without reference to this bottom? I mean the raw lands, uncultivated and unimproved lands? I mean by that what is their market value?

A. Ten to fifteen dollars. Well, outside of the Red River bottoms that is in timber lands.

Q. They simply have the second growth of timber?

A. Yes, sir.

Q. Now what are lands worth down in Red River bottom, both improved and unimproved?

A. Sixty to eighty dollars for improved and twenty to thirty-five dollars for wild land.

187 Q. In your opinion are these bottom lands improved more by the construction of this highway than are the hill lands?

A. Yes, sir, very much more. The hill lands without exception in our county are passable in most any kind of weather. They are hilly and gravelly, in this district especially, while the bottom lands are almost impassable.

Q. Is it not a fact, that the bottom lands are naturally irrespective of roads, more valuable than these hill lands?

A. Yes, sir by nature of the soil and what it will produce.

Cross-examination.

By Mr. Moore:

Q. You state, Mr. McGill, that you went on practically every section of land to get this information you have here?

A. Pretty close to it, as I understand. I didn't know the sections but we know every portion of the district.

Q. Didn't you get the majority of your information by catching

the owners of the land in Lewisville, Stamps or other places and obtaining the data?

A. Where we couldn't see them on the place we met them later in town. We made the trip through the country and where we didn't see a man we passed him up until we saw him on the street.

Q. You say before you commenced this road district you could go over it forty miles an hour? That was dry weather?

A. I went over it when the sand was deep and we made mighty good time on it at that time.

Q. That road had no ditches or drainage?

A. No, that was what was the matter with it, but it was passable.

Q. But it wasn't what you would call an improved road?

A. Yes, sir, it was gravelled at a pretty heavy expense and that would be improved.

Q. That is, it had some gravel over the road as the road happened to be, but without any ditches to furnish drainage?

A. Yes, sir.

Q. Take the territory that you have mentioned opposite Bradley, that you were assessor on. That is very similar to the territory in Red River bottom in this district west of Bradley after you leave Walnut Hill, the territory in the hills is quite similar to this district, is it not?

A. No, it is sandier.

Q. And the territory east down there is very low?

A. Very much like our flat land just south of Lewisville.

Q. Now you stated, I believe, that your first agreement on that was \$600.00 a mile?

188 A. I think something like that.

Q. Now do you think that the railroad received, or will receive any benefit from that Bradley road?

A. Yes, sir. As I stated, we found a neighborhood with lots of land in cultivation where they informed us they wanted to haul their cotton to Bradley. That is what they said.

Q. Take the territory that was already coming into Bradley, wasn't there a large proportion of that wild and uncultivated land?

A. Yes, sir.

Q. Do you think that the railroad will get any benefit from the road through that territory already coming to Bradley?

A. How is that?

Q. In counting this place that you have found that was going to come to Bradley, do you think the railroad will obtain any benefit?

A. If it develops it will; if it does not it won't.

Q. What is your opinion of the building of this road as to the development of that country?

A. I have no personal experience and knowledge of what it does. It would be hearsay. I have never lived where there was a highway.

Q. Do you or do you not know that the building of this road will improve that country?

A. Do you want my opinion? Do you mean benefit the railroad?

Q. I said first, will it bring new settlers?

A. Yes, sir, by making it accessible.

Q. From that standpoint it will benefit the country and that will create business for the railroad there, will it not?

A. Well, I don't know. If they open the country it will. If — is going to be all through this testimony. If it does, Yes. If it opens up that country it will benefit the railroad.

Q. Now that road comes in as I understand it, at right angles to the Shreveport Branch?

A. Which road?

Q. The road that you were assessor for near Bradley?

A. It crosses going east and west.

Q. So the Shreveport Branch is the part of the road that you assessed the benefit against?

A. Yes, sir.

Q. I will ask you as shown by this map if this road does not come in also at right angles to the Shreveport branch, just as the Bradley road does?

A. It does not cross it.

Q. Doesn't it come in within 150 feet of the Shreveport branch?

A. Something like that.

Q. You don't mean to say if you get within 150 feet of a railroad you have got to cross it to give it the benefit?

189 A. You understand the Shreveport branch would not be benefitted like the main line.

Q. A great part of the cotton from Lewisville has been going out over the Shreveport branch, has it not?

A. Well, no; I think the bulk of the cotton goes to Texarkana out of Lewisville.

Q. Then would you still say that the Cotton Belt in your opinion gets no benefit whatever from the building of this road?

A. That is my opinion. It is a speculation. I don't think it will.

Q. I am speaking of the road as it parallels the Cotton Belt. You know that the Shreveport branch receives the trade from this road district?

A. Yes, sir.

Q. And that this road is situated to the Shreveport branch similarly to the Bradley road?

A. A branch and a main line don't occupy the same position; one is the whole cheese and the other is a side issue. The Shreveport branch is a side issue.

Q. You say you assessed the benefits against that side issue at \$600.00, and you had an agreement for a less amount? What was that amount?

A. \$500.00 I believe.

Q. You say you believe it is \$500.00?

A. I know that is what we agreed on.

Q. I will ask you this question: Did you not, as an assessor, make a compromise agreement of \$500.00 with the attorneys of the Cotton Belt railroad, and in making that agreement, did you as an assessor not think at the time it was to be a cash payment of \$500.00 per mile, and not an assessment benefit of \$500.00 per mile?

A. I don't remember exactly. It seems like the impression got out, one of us thought it was a cash settlement and the other just a settlement.

Q. Didn't the Board report to the Commissioners that they had made a cash settlement of \$500.00 with the Cotton Belt?

A. I think we did.

Q. Then you did believe it was a cash settlement?

A. My attention was called to that at the time. I said I did not know and the other ones said they thought that was right.

Q. You were representing the people of that road district in getting an equitable settlement?

A. Yes, sir.

Q. It was your duty to know if you made a settlement, whether it was a compromise in cash or assessment of benefits?

A. Well, I would have accepted it either way at the time.

190 Q. I said it was your duty as an assessor to know what you were doing?

A. Well, I don't know whether my duty as an assessor is subject to criticism or not. That would be for the Commissioners and Road Commissioners to say; not for this court to settle.

Q. Do you not know that a cash payment of \$500.00 is the approximate equivalent of \$900.00 per mile?

A. I hadn't figured it; I don't know.

Q. I will ask you this question first: Who is the engineer for that district?

A. Christian.

Q. This man sitting here, is he not?

A. Yes, sir.

Q. The one who is also engineer for the district in court?

A. Yes, sir.

Q. Didn't the board of assessors discuss with the engineer the acceptance of an offer of \$500.00 cash per mile?

A. Now, it might have been perfectly clear in Mr. Christian's mind that he was talking about cash, but I never did consider it. I had never let the word cash get mixed up with the settlement, and the other assessors said we were all talking cash. I don't know that the word cash was used.

Q. Then you were so anxious to get settlement that in making it you didn't know whether it was a cash settlement or benefit settlement?

A. I would have accepted it either way.

Q. But did you know?

A. I rather think I thought it was just a settlement, without the word cash. We just agreed on that much assessment.

Q. And you really did not know whether it was cash or benefits?

A. I don't think I did.

Q. Now, you say you are in the cotton business at Lewisville now?

A. Yes, sir.

Q. You [shipped] considerable cotton to Texarkana, do you not?

A. Yes, sir.

Q. What does it cost for you to ship a bale of cotton from Lewisville to Texarkana over the Cotton Belt?

A. I don't know now. I have not paid any freight. Jones pays the freight, and when we sell it we get settlement. I think it was \$1.25 a bale when I was agent.

Q. Do you know what the freight is now?

A. I am not positive.

Q. You have shipped a lot of cotton in this past season?

A. Yes, sir; I don't think we paid the freight on any yet.

Q. You shipped some the season before that?

A. During the season of 1917, yes, sir.

191 Q. Then you made settlements on that cotton when it was sold?

A. No, I was buying for the other man.

Q. As a cotton buyer and as a former railroad agent, do you not know that in shipping cotton from Lewisville to Texarkana a freight rate of \$2.00 a bale is charged, and when the cotton is shipped on a rebate is made so it costs you only 25 cents a bale to put it over here.

A. After it is compressed it is rebated.

Q. Now, you have stated that people have been going and do go from Lewisville over to Stamps to take the train to Hope?

A. Yes, sir.

Q. Do not, and have not, people come from Stamps to Lewisville and take the train to Shreveport?

A. Yes, sir.

Q. Then the L. & A. runs from Hope to Shreveport?

A. Yes, sir.

Q. And the Cotton Belt runs from Lewisville to Shreveport?

A. Yes, sir.

Q. Don't the people, just as people, go to Stamps to go to Hope, come to Lewisville and take the Shreveport train to go to Shreveport?

A. There are some.

Q. With these good roads completed, do you not think that it will be reciprocal, that one will neutralize the other?

A. No, sir.

Q. Now the road leaves Lewisville and runs along the Cotton Belt and turns south and goes west to Shreveport Lake, does it not?

A. Yes, sir.

Q. That is in Red River bottom in this rich land you have mentioned?

A. Yes, sir.

Q. Now adjoining and south of your road for ten miles I will ask you what is the character of that land?

A. It is our best land, very rich land.

Q. That stretch is about how many miles wide?

A. I don't know, Mr. Moore; I have forgotten. I mean I don't know how many sections across it.

Q. It is an average of three or four miles across it?

A. I would say three miles to five miles.

Q. That is the same as this rich territory down in the Bradley District?

A. Yes, sir.

Q. Isn't there a road that has been gravelled probably three miles, about three miles from there from this point where it strikes Shreveport Lake reaching down through the heart of this rich territory?

A. Yes, sir.

Q. That road is the same kind of road that you mentioned that went in from Lewisville to Stamps?

A. Yes, sir.

192 Q. Just gravel thrown in on the ground without any drainage ditches?

A. The same kind.

Q. Will not this road when completed open up an area not only inside the road district, but an area of probably ten or fifteen thousand acres this side of this road district that will come in over this road you have mentioned?

A. Yes, sir.

Q. A feeder to this district?

A. Yes, sir.

Q. Won't all that trade come to the Cotton Belt?

A. It will anyhow, there is no other outlet.

Q. What in your opinion will be the effect of this road on opening up of all that territory in there?

A. What territory do you refer to?

Q. This territory that I have spoken of in south of Shreveport Lake through which this feeder comes that touches this country at the point indicated at Shreveport Lake? The road will make it more accessible and the drainage will put it in cultivation?

A. Our idea is that if that land is all cleared up except that slough; that land is very inaccessible and very hard to get to on account of being so low.

Q. Then your idea is that what that land is needing is both roads and drainage?

A. Yes, sir.

Q. And this road will make it accessible?

A. For three miles so far as that road is concerned.

Q. You stated, I believe, that this road that connects with this road going south would make it accessible and when drained it would be tributary to the Cotton Belt, so far as this road goes, about three miles, but is there not a good dirt road that has been established before you or I came into Lafayette County that goes clear on down through there for probably ten miles?

A. Yes, sir; everything that is made on there comes to Lewisville; everything made there will continue to come.

Q. And if that land is opened up and twice as much raised it will still come to Lewisville?

A. It will all come to Lewisville.

Q. In your opinion that will be no benefit to the railroad?

A. If it develops it will; I am not supposing. I want that word to follow all that.

Q. When you assessed land down by Bradley you took into consideration what you thought would happen in the future?

193 A. After talking with these men and getting their statement. They thought that we were going to begin building it the next day from the way they talked.

Q. Outside of these men, didn't you take into consideration the benefits in future?

A. I would say a road feeding a railroad would more probably benefit a railroad than one running parallel with it.

Q. How did you assess the property in the town of Bradley when you made that assessment?

A. On a per cent basis, just like the others did.

Q. Do you remember what percentage basis you used?

A. I don't know. That property was so low, I don't know whether we figured it 20, 25 or 15; I don't know. The records show, I think we made that a little higher than Lewisville and the other towns we assessed.

Q. Now, you have mentioned in 1917 you knew about two shipments of cotton that were hauled from Lewisville to Stamps.

A. Yes, sir.

Q. That was cotton bought by Crutchfield?

A. Fay Stewart of Stamps bought it.

Q. That good road between Lewisville and Stamps, or this gravel road that you refer to, had been built years before they commenced work on this present road?

A. I don't know when it was completed; they kept adding a little to it.

Q. It has been built about four or five years, has it not?

A. I couldn't say. I think we have been using it that time. It has gradually been added to.

Q. Then it was built in the year 1916, was it not?

A. Yes, sir; it was there then.

Q. During 1916 or 1917, when that road was opened, you never hauled more than 50 bales?

A. There may have been more, but I only hauled that. I was in charge of the warehouse then.

Q. Which is the cotton market of Lafayette County, Lewisville or Stamps?

A. Lewisville.

Q. Is not that the one that practically three-fourths of all the cotton of this road district goes into?

A. I don't know what the receipts at Stamps are; I have not asked. I know what we received.

Q. When this road is completed, in your opinion will not more cotton be brought into Lewisville from the territory contiguous to Stamps than will go from the Lewisville territory to Stamps?

194 A. More go to Stamps. They haul it right out of Lewisville now. Stamps is a better short cotton market than Lewisville.

Q. I thought you stated just now that Lewisville was the cotton market?

A. Well, Lewisville does more business, and we are strong on this long staple, but Stamps is a better market for the short cotton.

Q. Then you state that Stamps pays more money for cotton?

A. For short cotton, yes, sir.

Q. Before that road was ever built when parties were going from Lewisville to Little Rock, didn't the majority of that traffic go by way of the Cotton Belt to Texarkana and then over the Iron Mountain to Little Rock?

A. I couldn't say. When a man gets on the train going south I didn't know where he was going. When I was ticket agent I would sell him to Texarkana. The other way we usually know.

Q. There is usually more known about an automobile trip? You know now when a man leaves for Little Rock, but you didn't know before?

A. Well, I couldn't judge by him getting on the train.

Q. What is the area of cultivated land and the area of wild land as shown by this? You know where to refer to that.

A. I think 29,000 cultivated, and 41,000 uncultivated, or approximately that.

Q. Where is the place on the map that it shows that?

A. I don't know. I didn't put the figures on that map.

Redirect examination.

By Mr. Gaughan:

Q. You spoke of cotton being shipped by the railroad to the compress, for instance from Lewisville to Texarkana, that there would be a local charge made, and then there would be a rebate of all that charge except 25 cents. Isn't that true that that rebate is made only on condition that the road that hauls the cotton bale in gets the haul out?

A. [Now], we don't get any of that. He has got to own it in fee simple and sell it in Texarkana as his cotton. If he sells it in Lewisville the rebate never comes back to Lewisville.

Q. And he only gets that when the same road that brings it in carries it out?

A. Yes, sir.

Q. Mr. McGill, what, if any, benefit will the building of this highway have upon the improvements on this railroad? For instance, steel rails, ties or any property of that kind?

195 A. No benefit whatever. That is the market for steel would not be influenced by the building of good roads. You could purchase that steel without the road or with the road.

Recross-examination.

By Mr. Moore:

Q. Will not the building of that be any benefit to the store buildings and the property in the town of Lewisville?

A. My residence there in that town, I don't think it is worth any more.

Q. Did you think it was any benefit to the lots in Bradley?

A. Yes, sir; I didn't think that was the proper assessment, but under the Alexander road law I didn't see any other way.

Q. When did you come to the opinion that that was wrong?

A. When the bill was passed in the legislature.

Q. In order to come from Lewisville to Texarkana by automobile to carry in your truck you have to cross Red River, do you not?

A. Yes, sir.

Q. And you have to pay ferryage there?

A. Yes, sir.

Redirect examination.

By Mr. Gaughan:

Q. Who runs that ferry there across Red River?

A. I don't know who. I have never crossed it.

Q. Now, the construction of a good highway down to that river on both sides would materially increase the business of that ferry?

A. Oh, yes.

Q. Do you know whether he was assessed anything?

A. No. The ferry was not assessed.

Q. Counsel for the road district asked you if the assessors or some of the assessors did not report to the engineer that the agreement reached between the railroad company and the assessors was that the assessment of \$500.00 a mile should be paid in cash? Now, as a matter of fact, that matter was taken up with the attorney for the railroad immediately, was it not, or do you know?

A. Yes, sir.

Q. Do you know that the railroad company took the position that that was not the agreement; that the agreement was that the assessment should be \$500.00 and that it would be paid just like anybody [else] assessment?

A. Yes, sir.

Q. And all the assessors agreed to that, did they not?

A. Yes, sir.

Q. So if there was any controversy about it the controversy was settled?

A. With me, in a short time, immediately.

Q. What do you mean by the word "immediately?" You say that was taken up immediately and settled. Does that mean one day, two days, twenty days, or how soon?

196 A. Well, just as soon as naturally a business proposition could come around by communication of a letter from Camden.

Q. How soon did you report to the attorney, not for the railroad but the attorney of the road district, that this settlement had been made?

A. The same day.

Q. How long after that was it before that attorney found out that that was not to be a cash payment, but an assessment?

A. I don't remember; it may be three or four days.

Q. Do you not know as a matter of fact that the attorney did not find out until the present speaker told him that that settlement had been made by Mr. Updegrave?

A. No, sir.

Q. Do you know how Mr. Searcy found out that that was not a cash settlement, but a benefit settlement?

A. No, sir.

Q. Then when you used the word "immediately" do you know whether he found it out within two days or three weeks?

A. My recollection was it was in less than two or three days; I may be mistaken.

Redirect examination.

By Mr. Gaughan:

Q. At any rate, you know it wasn't a very long time?

A. No, it was in the course of a few days; but it just appeals to me now that it followed right along in the course of human events, shortly, immediately.

Witness excused.

Mr. Gaughan: Now, your Honor, we desire to renew our offer of exhibit referred to in the testimony of Mr. Fleck.

Mr. Moore: I want to file my objection to that being put in. I am willing to admit this: that Mr. Fleck will say that he made up these figures. I will state it on the ground that they are immaterial, and that he has not shown the knowledge of conditions and values that would warrant them in being put in.

The Court: I think that will go to the effect of it, the credibility. I am inclined to admit them, Mr. Moore. It will be received in testimony.

Mr. Moore: We save our exceptions.

The exhibit so introduced, being exhibit No. 7, is as follows:

27 J. E. BARHAM, a witness on behalf of St. Louis Southwestern Railway Company, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gaughan:

Question. You live in Lewisville?

Answer. Yes, sir. I was born in Lafayette County and lived in Lafayette County thirty-two years.

Q. What character of business have you been engaged in in the last eight or ten years?

A. I was in the sheriff's office six years, and assessor's office, you might say six years. I was assistant tax assessor two years and tax assessor myself four years.

Q. You were in the sheriff's office during the time your father was sheriff?

A. Yes, sir.

Q. Then, you were in the assessor's office?

A. Yes, sir.

Q. Since that time what business have you been in?

A. Well, I am in the garage business now, and I got up this assessment on this road, the acreage and the estimated value, of this road district, and then I was one of the assessors on the road district in the lower part of the county.

Q. You say you were one of the assessors of Road District No. 1?

A. Yes.

Q. That is the road district Mr. McGill has referred to that extends out west to Red River?

A. It extended east and west.

Q. But most of it goes west?

A. Yes, it goes one mile east and seven miles west.

Q. Now, will you please take the map which has already been introduced in evidence. Did you and Mr. McGill, the witness who testified just before you, get up the information that appears on this map?

A. Yes, sir.

Q. Now, this map is a map of terrain that is embraced in the road district involved in this lawsuit, is it not?

A. Yes, sir; it is. Now, there is one or two pieces not on this map. Well, I see they have got it down here; that really should not be in it; that is really in another county. There is also one or two places across Dorcheat cut off.

Q. The map practically shows the area of this district?

A. Yes, sir.

Q. And also that map practically shows the location of the St. Louis Southwestern Railway and also the proposed highway?

A. Yes, sir; I have not traced it out section by section.

Q. It is practically correct?

A. It is practically correct.

198 Q. Also I notice on this map certain figures made in each one of the sections showing valuation of land, population of section, the assessment of the lands in that section for State and County purposes, and also the assessment of the benefits which were supposed to come to that land in the building of this highway. Are those figures correct?

A. They are; yes, that is approximately.

Q. I will ask you to state to the jury how you and Mr. McGill arrived at the valuation of these lands which you have entered on that map?

A. Estimated the value; the true value that we estimated. Is that the value you are talking about?

Q. Yes.

A. In going around over the country we would ask different parties what the lands were worth, and some lands sold and I knew what the parties had gotten for the land, and then my personal

knowledge of the lands and the kinds of land. I expect I have been every piece of land in Lafayette County.

Q. Then in arriving at the value which you placed on these lands, you took into consideration the price of lands in that neighborhood and brought?

A. Yes, sir.

Q. Then you also consulted with other people?

A. Yes, sir.

Q. Then you took into consideration the character of the land itself?

A. I did.

Q. Then you formed the best judgment you could as to the fair market value?

A. I did.

Q. And that reflects it?

A. It does.

Q. How did you arrive at the population?

A. By asking the parties. We asked how many people on every farm; that is, we could not go to each family in this whole district; we didn't have but nine days to get it up in, and we had to get it the best we could, that is go to parties that we knew they knew approximately what was there. We didn't go over every bit of this land in the eastern part of the county.

Q. That next to Columbia County?

A. Next to Columbia County. We went over that more thoroughly than we did the part next to the river.

Q. Why.

A. For the simple reason that I did not know the value of this land over here (indicating myself, anywheres near like I did over near Lewisville and below, and the people in below Lewisville I knew always came out to Lewisville on Saturdays and I knew the nature of the land, and it would just save about three weeks' work and get the same data that I would get by going to their houses. In one day in Lewisville I did just as much work as I did in four going around over the country.

Q. Have you ever any experience with road improvement districts other than those in Lafayette County?

A. No, sir.

Q. And you have had no experience with those road districts except to get up this data in No. 2, and you were assessor in road district No. 1?

A. Yes, sir.

Q. Now in road district No. 1 was any part of the Cotton Belt Railroad located in it?

A. Five miles.

Q. That road which was supposed to be built in that district meets with the Cotton Belt Railroad perpendicularly?

A. It does, yes, sir.

Q. And extends out to Red River?

A. It don't go plumb to the river.

Q. The District goes to Red River, but the road does not get quite to the river?

A. No, sir.

Q. What settlement was made between that district through the assessors and the commissioners and its attorney, with the road, with reference to the amount of benefits that should be assessed?

A. \$500.00 a mile.

Q. Now, in your opinion would that road benefit the railroad more or less than the road that is involved here in this litigation?

A. Well, according to the mileage that is in it, and the mileage in the other, it would be hard to get at.

Q. I mean per mile.

A. Well, I believe that the lower road would benefit more than the one that runs parallel.

Q. Why?

A. It is more of a feeder at the time being; after the road is completed I don't know what it will bring forth; how long it will take to build the country up and the freight and passenger business to build up. That is something I don't know anything about.

Q. You say that is a matter of conjecture?

A. Yes, sir.

Q. But so far as the matter of the building of the road is concerned itself, it is of no benefit to the railroad at all, is it? The mere building of the road itself is not of any benefit to the
200 railroad unless there should be an increase of business later on?

A. Oh, yes; of course if the building of that road builds up the country and people move in there, that is going to enhance the value of the land and the railroad is going to be enhanced.

Q. In other words, the land that the railroad occupies would be enhanced just as much as the other land adjoining it?

A. Yes.

Q. But do you think the improvements on this land would be enhanced, for instance steel rail and ties?

A. No, I don't think so; only in a business way in the country building up and the revenue derived from the freights and the passengers traveling over the road.

Q. Now, as to whether or not that road will increase the net earnings of that railroad is a matter that you don't know?

A. No, I don't know. I don't know how the railroad will be run. You can run anything to increase or decrease it. It is owing to who has charge. I do think more revenue will come in to it. Of course the railroad may spend more revenue.

Q. Do you think a good highway that parallels a railroad takes business from it?

A. To a certain extent.

Q. You have no way of being able to know whether or not the amount it takes from it will be overcome by the amount received from it, or which way the scales would turn?

A. No, I haven't any way of knowing. Of course everybody has their opinion about a thing like that.

Q. You never had any experience?

A. I haven't been around any road district to find out.

Cross-examination.

By Mr. Moore:

Q. What year were you first elected assessor of Lafayette County?

A. Four years ago in January. I took office in 1915.

Q. As assessor you had to take a list of all the automobiles in the county, I believe, did you not?

A. Yes, sir.

Q. What was your last year as assessor?

A. 1918. I turned a list in in 1918. The last list I turned in was this year, 1919, but assessed in June, 1918.

Q. Now, you turned in a list to the highway commissioner between the first and the tenth of January of all the automobiles in the county?

A. I turned them in this year for the assessor as his deputy.

201 Q. What increase, if any, was there in the number of automobiles up until January 1918, being the January before this good road was even started?

A. The first year I got up a list of them there was 108.

Q. What year was that?

A. 1914.

Q. What was the number in January, 1918?

A. Well as I remember there was 276.

Q. There had been no road district organized at that time, had there?

A. No, sir.

Q. That was just the natural increase in automobiles?

A. Yes, sir.

Q. Now, those cars carried people locally only, did they not? What I mean is people went in them for short distances only?

A. So far as I know; I don't know where they went.

Q. They owned them right there in the county?

A. The only ones I could take were the automobiles belonging to the people in the county.

Q. If they were going to take a trip of any distance don't they go by train?

A. Some do and some do not.

Q. I am talking about the great majority?

A. Yes.

Q. Now, you state this road district comes in perpendicular to the railroad?

A. Yes, sir.

Q. Does not this road district that you have the map of, come in perpendicular to the Shreveport branch?

A. It comes in perpendicular to the end of the branch. It does not cross the branch road.

Q. So any person or any goods can be shipped out over the Shreveport branch?

A. Oh, yes.

Q. Then would not this road district be of just as much benefit to the Shreveport branch as the feeder to the Bradley Road district? Would it be as much of a feeder as the one you were assessor for to Bradley?

A. Well, I don't know how much stuff is shipped over that road either way.

Q. The road district, and the road at Bradley, ran one mile east and about seven or eight miles west?

A. Yes, seven miles west.

202 Q. This road runs about seven miles west and about twelve miles east of the Shreveport branch. That is correct, is it not?

A. Yes, sir. I don't hardly think that the road there at Lewisville being perpendicular would hardly be as good a feeder as the one down at Bradley, for the reason that you take all the stuff in below there, every bit of it comes right to Bradley and can't get out any other way. The one there at Lewisville, it would go out on the main line. It will be as good a feeder for the main line there at Lewisville, but I do not think it will for the branch road.

Q. Taking the Cotton Belt as a whole, the Shreveport branch and the main line, will not this district be worth as much as the Bradley district is to the Shreveport branch?

A. Yes, sir; I think so.

Q. What is your opinion as to the probable increase of land in cultivation and the population that will be brought about, if any, by the building of this road?

A. Of course I have never had any experience with any roads like that. That is just a matter of surmise. Of course, I think it will build up; it would be natural. I think it would increase twenty per cent. Of course that is going to take some time.

Q. In estimating the benefits from the Bradley road you took into consideration that prospective increase in population, and increase in cultivated land?

A. Yes, sir.

Q. Now, please state what settlement you as an assessor thought you had made with the Cotton Belt road of the benefits to be assessed against the Shreveport branch for the use of the Bradley Road District?

A. I think it was a cash settlement; I understand it that way.

Q. You made that report to the road?

A. Mr. McGill and I both did.

Q. Did you make that report to the engineer?

A. That was made by the attorney.

Q. You don't know whether Mr. McGill made any report to the engineer or not?

A. No, I don't.

Q. Did you ever find out it was not a cash settlement until after the conversation between myself and Mr. Searcy?

A. I didn't know it until Bob Searcy showed me your letter from St. Louis.

Q. How long after that settlement was made was that, as you think?

203 A. About two weeks as well as I remember.

Q. Now, you have stated that you did not think the steel rail and ties, as such, would get any benefit from the building of this road.

A. I don't think it would.

Q. Suppose instead of taking the land as land, the ties as ties and the steel rail as rail, you take that as a railroad then do you think that would get a benefit from the building of this road? Not separating them into units?

A. Well, of course the railroad carries the freight and the traffic; and all that will. Now, how long it will be before it will receive that benefit, I don't know.

Q. As to whether it will receive any increase in net revenue, that is, whether they will receive more money than they spend to carry that you don't know?

A. No, sir.

Q. And that depends on what they pay people to work for them and other things, and you can't say about it?

A. No, sir.

Mr. Gaughan: Mr. Barham, after you found out that the railroad company did not understand this matter as you understand it, the assessors agreed to the assessment of \$500.00 a mile, and it was satisfactory to both sides?

A. Yes, sir.

Mr. Moore: When that agreement was made, had not the time expired, the 20 days, within which an appeal could be taken from the assessment? Had not that time expired?

A. I don't remember.

Q. I will ask you another question. Before making this compromise agreement with the Cotton Belt, had not the Commissioners agreed on an assessment of \$1,500.00 a mile as the amount of benefit to lay on the Shreveport branch when you met to make the assessment?

A. Yes, sir.

Q. And before conferring with the Cotton Belt attorney had not you agreed that the proper benefit that the railroad would receive from the Bradley Road District was \$1,500.00 a mile?

A. Well, the three of us wasn't together on that, but we agreed to that.

Mr. Gaughan: But up to the time this compromise was made there really had not been any assessment entered on the books?

204 A. Yes, sir; it had been entered on the books and rubbed out.

Witness excused.

F. W. GREEN, a witness on behalf of St. Louis Southwestern Railway Company, being first duly sworn, testified as follows:

Direct examination.

By Mr. Turney:

Q. Just state your name to the court.

A. F. W. Green.

Q. What is your business, Col. Green?

A. Assistant to the president of St. Louis Southwestern Railway Company.

Q. How long have you occupied that position?

A. From October, 1916, until I went in the Army in April, 1917. Then I resumed upon my discharge from the army on April 15, 1919.

Q. What are the duties of that position in a general way?

A. At the present time to assist the president in matters of executive detail, and to attend to the engineering matters pertaining to the corporation.

Q. During the period of time prior to Government control, what were the duties of the position?

A. Wholly executive administration.

Q. Prior to that time what was your business?

A. General manager of the L. & A.

Q. For how many years?

A. Five years.

Q. In a general way, Col. Green, just state your railroad experience, its nature and character, without going into detail.

A. I have been in the Railroad business since 1893; engineering, location, construction, maintenance and operation; in various capacities, subordinate capacities, up to superintendent, general superintendent and general manager.

Q. How much of that time has been spent on railroads in Arkansas?

A. 13 years.

Q. Does the L. & A. go through Lafayette County?

A. It does.

Q. Are you familiar with conditions in that county?

A. I am.

Q. Where was your residence in Arkansas?

A. Stamps?

Q. How long were you connected with the L. & A.?

205 A. Nearly 11 years.

Q. All the while your residence was at Stamps?

A. Yes, sir.

Q. And in this road district?

A. Yes, sir.

Q. Are you familiar with the conditions existing in that district?

A. I am.

Q. Both from a railroad traffic standpoint and the general nature of the country?

A. Yes, sir.

Q. Col. Green, have your duties called upon you to investigate and consider the relation, if any, between density of traffic and increased net earnings of a railroad?

A. Yes, sir.

Q. Just explain in your own way fully to the court and jury what your investigation and your experience has led you to believe to be true regarding that condition.

A. Prior to about 10 years ago the railway business was a business which reflected largely increased earnings for relatively small increments of business; that is to say as the number of passengers and freight transported increased the profit accruing to the railway company became greater. About ten years ago the doctrine was adopted by the States and the Federal Interstate Commerce Commission of restricting railway companies to what the regulating authorities considered a fair return upon the value of the investment. As the result of the application of that policy, as the earnings increased the rates were reduced from year to year, or from month to month, the object being to hold the amount of income available for return to the invested capital to as near as possible a minimum amount, the public receiving the benefit from the increase in traffic, either through increased service or decreased rates.

Q. Well, if the service was increased would that necessarily mean that the cost of giving the service increased and the net return reduced?

A. It would.

Q. If the rates were reduced it would mean that the net income would still remain where it was before the density increased?

A. It would.

Q. The result is, by reason of increased density of traffic the public gets the benefit either by better service or reduced rates?

A. That is correct.

206 Q. Now, generally speaking, how has the density of traffic in the southwest and particularly on the Cotton Belt and the railroads in Arkansas, increased during the last twelve or fifteen years?

A. Aside from the extraordinary increase in the last year or two, due to the conditions created by the war, there has been a uniformly normal increase in the volume of traffic on the Cotton Belt railroad for the last twelve or fifteen years at the rate of 5 to 7 per cent per annum.

Q. That is in density?

A. In density.

Q. Has that been true of the net, or of the return on the investment? Has there been any increase in that?

A. The return on the investment, I cannot speak of my knowledge for that period. Recently, the last five or six years, the return on the investment has tended to just about hold its own.

Q. Despite this increase from six to seven per cent increase in density of traffic?

A. Yes.

Q. Is that due entirely to the lowering of rates?

A. It is due to a variety of causes; reducing of rates, readjustment of rates, opening up of competitive lines, and the railroad's increase in operating expenses caused by labor and material; several items of that character.

Q. Col. Green, would you say that an increase under normal conditions in a railroad's traffic density, of any substantial amount, from 15 to 50 per cent, would necessarily result in an increase in the value of the railroad's property?

A. No, not necessarily.

Q. Is there any known criterion by which you as a railroad man could ascertain whether it would or not?

A. Not unless I were a prophet.

Q. Is there anything outside of a Divine insight that could do that?

A. No, sir.

Q. And the reasons are those you stated, the factors over which the railroad has no control?

A. Yes, sir.

Q. Now, have you given the question of benefits which accrue to property as a result of the construction of good roads any thought?

A. I have.

Q. Have you lived in Kansas where they have good roads?

A. Yes, sir.

207 Q. And in communities where they have been?

A. I have.

Q. Have you lived in communities where they have constructed them and seen the benefits which flow from them?

A. Yes.

Q. And those where they have not?

A. And where they have not.

Q. From your judgment and knowledge of these conditions, what is it that the construction of an improved highway does that benefits land lying near it?

A. It increases the accessibility of land, and to that extent adds or enhances the value of that land by reason of its accessibility, the enhancement of value being proportionate to the productivity and its location. Generally speaking, if productive land has highway facilities to connect with a market its value is enhanced; if the opposite is true it does not have the value for sale or for use it would have with the highway. A highway does not benefit, generally speaking, land which is not productive or capable of being made productive.

Q. Does the highway benefit or enhance the value of the improvement erected on the land?

A. It does not.

Q. Why?

A. For the reason that the improvement is something which is perishable and which can be replaced in kind at any time, and there can no value inhere to the improvement by reason of the improvement to the land itself, to the naked land, by reason of the construction of a highway.

Q. Do you think that the building and construction of improved highways will open up and develop a country if that country is composed of lands susceptible of improvement?

A. I should say that it certainly would.

Q. And will it, do you think, increase the traffic density of the railroad serving that community?

A. It depends a great deal upon the location of the highway itself, and whether or not it parallels or is perpendicular to the railway considered.

Q. If it does increase the traffic density in any amount, is there any known criterion by which it can be determined whether or not that increase in traffic density will enhance the value of the railroad property?

A. An increase in traffic density in any case does not enhance the value of the railway property as property.

Q. What does it enhance?

A. It enhances the gross revenue accruing from the use of that property, but does not increase the value of the property considered as real property itself.

Q. Do you consider that it does enhance, provided of course that the net earnings may be increased by reason of the increased density, that it does enhance the value of the franchise of the railroad company?

A. Yes, it would enhance the value of the franchise of the property; enhance the value of the use of the property just as it enhances the value of any other business participating in the development.

Q. Is there any known criterion by which that enhancement in value to the franchise can be determined?

A. None that I know of.

Q. Does the construction of an improved highway have any direct benefit to the railroad real property?

A. It does.

Q. What is that benefit?

A. The railway's land, considered as naked land, receives the same benefit from the construction of a highway that any land receives from the construction of that highway.

Q. That is, the same area of the railroad property receives the same benefit as a corresponding area of similarly situated land?

A. Yes, sir; as naked land.

Q. Do the steel rails and ties and dump receive any benefit?

A. None whatever.

Q. Why not?

A. Because they are items of tools incident to the use of the property. They are capable of replacement, restoration at any time, and are temporarily located and used in that work; whereas the land itself is there permanently and is the only thing which receives the benefit.

Q. Does it ever become necessary to replace those ties and rails and fastenings and dump?

A. It does.

Q. Can you state about how often?

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A. In this country ties require renewal about every six years; rails about every 12 or 13 years; the embankment requires replacement and repairs determined upon the weather and climatic conditions, every six or ten years. Ballast requires renewal every seven years or about that length of time.

Q. So these things, these elements that you have mentioned, are the only elements that tend to make the railroad property, considered as property regardless of its franchise, valuable?

A. Practically, with your structures of course, your bridges and trestles.

Q. And that value is due largely to the temporary personal property that is located on it?

A. It is.

Q. What Board in Arkansas makes the State and County—the assessment of taxes for State and County purposes, against railroads?

A. The State Tax Board.

Q. You are familiar with how that assessment is made?

A. Yes, sir.

Q. How is it made on the Cotton Belt?

A. The earnings of the Cotton Belt system as a whole of each company are taken, and from this total earnings are deducted the value of the railroad stock and equipment and the value of the buildings.

Q. Now are they deducted from the earnings before or after they are calculated.

A. Before. My understanding is that they are deducted before. The remainder is then proportioned to Arkansas in proportion to the mileage in Arkansas bears to the total mileage of the system.

Q. I do not catch all you state. You say that the earnings themselves are apportioned to the State, or do they do something with the earnings before they apportion them?

A. As I understand, they deduct from the earnings.

Q. Do they capitalize the earnings before or after that?

A. Yes, sir.

Q. How?

A. By taking the amount determined from that computation and dividing it by six per cent. That capitalizes the property. The assessable value is one-half of that.

Q. They take the earnings over a period of a number of years and average it?

A. Yes.

Q. Then they capitalize those earnings and get them into capital value by dividing by six per cent?

A. That is right.

Q. The result is the entire value of the railroad, of all its property?

A. Yes.

Q. They deduct, then, from that entire value the value of buildings, improvements and railway stock?

A. Yes, sir.

210 Q. The remainder they divide in the number of miles in the system?

A. That is right.

Q. And the assessment in each county is at that rate per mile in the county?

A. Yes, sir.

Q. After they get the assessment per mile on that basis do they divide by two?

A. They divide by two, as being the assessable value.

Q. In order to get 50 per cent of the actual value?

A. Yes, sir.

Q. That means then that the earnings of the railway property are considered to [represent] six per cent of the value of the property invested in them?

A. That is true.

Q. State whether or not if the earnings are capitalized at that amount it would represent the true market value of the railroad including its franchise and including all other property it owned in and without the State?

A. I think that is what it is intended to represent.

Q. Would it represent that?

A. That is a matter of opinion.

Q. Well, I will put the question in a hypothetical case. Having the amount of investment in road and equipment at a given sum precisely the same as the amount of the capital stock, with no bonds, and the capital stock paying a six per cent dividend, would or would not that stock sell at par?

A. It should.

Q. The question I am trying to get at, Col. Green, which seems to afford our friend so much amusement, is whether or not six per cent is a fair amount to earn upon the amount invested in railway equipment?

A. I think it is.

Cross-examination.

By Mr. Moore:

Q. Is there any question in the United States today that is as big as the question of what the real value of the railroads are at the present time? I will say, isn't that one of the biggest questions of the day?

A. It is one of the large questions today.

Q. Is not it one on which there is greater difference of opinion between all parties, owners of the roads, the Government, the employees or the Four Brotherhoods?

A. It is a question upon which there is a great divergence of opinion.

Q. Then wouldn't any one be rather rash to come out and state a formula by which you could arrive at the value of all the railroads or any given road?

211 A. There are many different kinds of values so that it is a difficult matter to answer that question. There are so many

different conceptions of what value is. One conception is that the value of property is that for which it will sell. Another conception is that the value is what it will earn, capitalized at the prevailing rate of interest. Another one is that it shall represent only what it cost originally. Another one is that it shall represent the result of an appraisal by men of political influence and who know but very little about matters of that character and have no practical knowledge of it.

Q. I will ask you if there isn't still one other method in figuring it? You have named all except the one. Isn't that the question of replacement?

A. That is another one, yes, sir.

Q. I will ask you if you have just read John W. Alvord's treatise on this subject?

A. I read an article published by John W. Alvord some little time ago on the theory of valuation for rate making purposes which is evidently the article you refer to.

Q. Now, it was asked if the earnings of the railroad were not capitalized by the Arkansas Tax Commission at six per cent? Do you or do you not know whether they are capitalized at that?

A. That used to be the rule. I am not familiar with what has happened in the last two years. I have been out of the country.

Q. Well, with the Cotton Belt railroad have you had these particular duties put on you about assessment or not?

A. We have always conferred on these matters with our tax commissioner and our legal department, and I have not handled all the details myself.

Q. Well, with the L. & A. did not the accounting and legal department handle this entirely?

A. They handled that entirely.

Q. You had nothing to do with going before the Arkansas Tax Commission?

A. No, sir.

Q. If a road was to be capitalized on six per cent of its earnings it should not be assessed anything?

A. That would be the logical conclusion.

Q. Take roads in Arkansas for the last three or four years. If you had to assess them on earnings there would be no assessments?

A. That is rather far-fetched; that would be the logical outcome of the application of that theory.

Q. Can any half dozen men that want to get a railroad franchise by paying the necessary fee procure that franchise?

212 A. By complying with the necessary requirements as to organization, they can.

Q. Now, you were asked as to the value of ties and of steel rail taken apart from the land. You answered, I believe, that it had no value except whatever its sale value would be?

A. I did not make that answer. I said that I considered the rail and ties and these temporary items received no increase in value by reason of the construction of an improved highway.

Q. A railroad is allowed to earn how much money, if it can earn

it—what percentage on its investment? First, I will ask you if that has ever been definitely settled in reference to a railroad?

A. It has not been definitely settled as to the establishment of any fixed per cent. It has been held in some instances that seven per cent would be the legal maximum, but it has been held in some cases not to to upset the result if the return has been as much as 5 per cent.

Q. If the additional traffic could be procured for the Cotton Belt road that would earn it two per cent net more than it earns now, that would still be allowed?

A. Only until the shipper became aware of the increase in earnings, when undoubtedly, if the future can be predicated on the past, application would be made for a reduction in rates.

Q. I mean instead of having net earnings five to seven per cent, if they could increase the net earnings two per cent, that still would not increase the maximum that the law would allow.

A. No, I don't think it would. But what the law allows and what the rate making authorities allow—

The Court: When you say the law allows, Mr. Moore what law do you have reference to?

Mr. Moore: He has said that the Interstate Commerce Commission has allowed from 5 to 7 per cent earnings. I am taking that as a premise.

The Witness: I didn't say that.

Mr. Moore: What was it you said?

A. I said while the decisions of the court had varied in what should be the legal maximum return upon the properties in other words when it became necessary for the courts to decide what was the fair rate of return the courts originally held in the early days that 7 per cent would be considered more than a fair return; but that in recent years the tendency has been for the courts reviewing rate cases not to upset the regulating authorities' rates established in any case where the return appeared to be as much as 5 per cent.

Q. Has the return for the last year or two years been as much as five per cent net?

A. I haven't seen the annual report for 1918 or 1917; I don't know.

Q. Do you not know that prior to the time you left here it was less than 3 per cent net?

A. It was low. I don't remember the exact figures, Mr. Moore. It was not high I remember.

Q. Wasn't it so low that you could add to that net return two per cent and still not be above the five per cent that is allowed?

A. That is probably so.

Q. Then if any increase in traffic should be obtained from building this good road the railroad could get the benefit of that increase because they have a lee-way in there that they can still earn without having money taken away from them?

A. If they could be permitted to keep what they made,

Q. You say they are permitted to keep it up to five per cent?

A. I didn't say that.

Q. That the courts had allowed it?

A. I said that the courts did not upset the decision of the rate regulating authorities where it appeared that the railways were receiving no more than five per cent on their investment. In other words, the tendency of the court has been to leave matters of that character to the discretion of the rate regulating commission and to give the public the benefit of the doubt as to a fair return to make.

Q. I will put my question in a little different way. If upon the building of this road, the finding of an oil field or any other reason, a large increase of traffic should be obtained by the Cotton Belt, they could get the benefit of that up to five per cent before the courts would take that away from them, could they not?

A. That is a difficult question to answer, Mr. Moore. The answer would be predicated upon the theory that the courts in the first instance regulate the rates. The courts act as reviewing authorities and the regulating commissions establish the rates. The practical outcome, as I view that question, would be this: If there should be any large increment in traffic with corresponding increase in earnings, that would immediately be seized upon by all of the in-

214 terested shippers, especially of those articles the volume of which had been increased, as an argument and as a reason which would no doubt be accepted as a convincing argument by rate regulating authorities, as a basis for a reduction.

Q. Do you not know there has been a flat increase of practically 25 per cent on practically all interstate rates?

A. I know 25 per cent increase in some rates.

Q. Wasn't that made because of the loss that was [was] being sustained by the roads?

A. That was the reason given in the newspapers.

Q. Then, if the roads are actually losing money, if they can get an increase of traffic and save part of that loss, can they not thus get a benefit from it?

A. Not necessarily. Sometimes when rates are increased the effect is to kill the traffic, and the railroad is just as badly off with a high rate and no traffic to move as they were with a volume of traffic and a lower rate.

Q. Is not a railroad always anxious to secure an increase in traffic?

A. If the traffic is remunerative, yes, sir.

Q. Have not the railroads endeavored to procure all of the agricultural traffic, such as cotton, corn and hay, and business commodities from wholesale houses in to the local points?

A. They have endeavored to get all of that they can.

Q. Then if anything can be done, or should be done, to cause that traffic to increase, it would of necessity benefit the railroad to that extent?

A. It would benefit their gross earnings, and it would benefit the railroad company as a company if they were permitted to keep what they made.

Q. If they are not actually making money, and they stop some of that loss, they would not take that away, because they would still lose money, would they?

A. I don't know what they would do.

Q. What is the distinction that you draw between the railroad company and the earnings of the company. You made a distinction that I did not get clearly. Did you say if traffic increased the railroad received no benefit, nor the stockholders? Just what was that statement?

A. I said that the tendency in the last ten years had been that as the volume of traffic, the number of tons moved increased, and the revenue therefrom correspondingly increased, that immediately the rates would be reduced by the rate regulating authorities in accordance with their conception of what reduction was necessary in order to make the traffic of the railway as a whole yield a fair return upon the value of the investment. In other words, that the increase in density of traffic on any railroad benefits the public as a whole, either through increased service or decreased rates, and the return to the railway company is kept practically constant.

Q. Is not lumber and timber products the largest single item that moves out of this territory that we are referring to in Lafayette County?

A. Lumber probably is.

Q. Has the rate on the lumber been decreased within the last ten years, or increased?

A. It has been increased, I think.

Q. Isn't cotton and cotton seed one of the next largest products to lumber?

A. Yes, probably is.

Q. Has the rate on cotton and cotton seed and the products of the cotton seed been increased?

A. I think the rates on both have been increased to tide over the railroads in this war emergency.

Q. Not taking into consideration this twenty-five per cent war increase, has there been any decrease prior to that time?

A. I think the Arkansas Railroad Commission made a decrease in cotton in 1907 or 1908.

Q. They have no authority over interstate rates?

A. No, sir; but practically all cotton in Arkansas moves intrastate to the compress.

Q. Then it has to go out interstate?

A. Yes, sir.

Q. Has that been increased?

A. Not that I know of.

Q. Then, on these particular products raised in that section there has been no decrease in the last ten years?

A. Not to my knowledge.

Q. You are well acquainted with the territory around Stamps and Lewisville?

A. Yes, sir.

Q. In your opinion if a good road is built connecting those towns will or will not that make that territory more desirable as a place of habitation?

A. It will make communication more easy and to that extent it will make the place more desirable.

Q. In your opinion will that cause more people to buy land, to clear it up and settle and live on it, in that territory?

A. I should think the tendency will be that way where good land capable of producing well and be developed. I do not think it will be the result in the case of this gravel hill land because practically nothing can be raised on them, and they of course
216 will not be [benefitted] to the extent that the land that is capable of good production will be [benefitted].

Q. Do you not know that that land you referred to as gravel hill land, that the land between Stamps and Buckner has been practically cleared and settled as a whole within the last few years?

A. There has been a great deal of development there due to the increased prices which the farmers have received for their commodities. I think that has been one of the important elements rather than the construction of the road.

Q. Do you not know, or do you not believe, that the character of that land between Lewisville and Buckner is such that it will be settled up in the future as it has in the past?

A. Between Lewisville and Buckner there is some good farm land; there is also a very large amount of poor land, clay land, which is not susceptible of building up for agricultural purposes.

Q. Did you state whether or not you thought there would be an increase of traffic to the Cotton Belt from the building of this road?

A. No, I didn't say there would or would not.

Q. In referring to net revenue in your opinion will or will not there be an increase of traffic to the Cotton Belt from the building of this road?

A. On the whole I think that some increase in traffic will accrue to the Cotton Belt to a more or less extent offset by the decrease in traffic due to the jitneys and trucks operating on the improved highway. On the whole I think there will be some slight increase in traffic going to the Cotton Belt due to the development of the country.

Q. As a railroad man do you not know that on short hauls, say five to eight miles, whether it is a passenger or freight, that there is little if any profit?

A. Very little profit on short hauls.

Q. Do not the railroads make their profits, if they make any, make the greater part of their income from the through freight, inbound and outbound?

A. That is true.

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Redirect examination.

By Mr. Tarney:

Q. If the rate on lumber and lumber products and cotton and cotton seed has not increased in the last ten years, why has not net income increased?

A. Because the expense of operation has very greatly increased.

The cost of money is greater now than it ever has been, cost of taxes have increased. There have been large assessments for highways, levees, drainage canals and so on, and the wages of labor and the cost of materials, fuel burned by the railroad: everything which the railroad buys has cost much more money.

Witness excused.

St. Louis Southwestern Railway Company rests.

Whereupon Road Improvement District No. 2 of Lafayette County, Arkansas, to sustain the issues upon its part, offered and introduced the following testimony, to-wit:

Mr. Moore: I offer the deposition of J. E. Searcy.

The deposition of J. E. SEARCY was here introduced in evidence, being in the following words, to-wit:

The Deposition of J. E. Searcy, taken on the 30th day of April, 1919, between the hours of 9 and 11 o'clock A. M., at the office of the Circuit Clerk, in the Court House of Lafayette County, State of Arkansas, in the city of Lewisville, to be read in evidence in the cause pending in the U. S. District Court for the Western District of Arkansas, Texarkana Division, wherein the St. Louis South-Western Railway is Plaintiff, and the Commissioners of Road Improvement District number 2, of Lafayette County, Arkansas, is Defendant.

Interrogatory 1. State your name, place of residence and official position. State how long you have occupied the position as Circuit and Ex-officio County Clerk of the County of Lafayette, State of Arkansas.

Answer to Interrogatory No. 1. J. E. Searcy, Clerk of the Circuit Court of Lewisville, Lafayette County, Arkansas, and have occupied the position as Circuit Clerk and Ex-officio Clerk of the County of Lafayette County, Arkansas, for about four years and a half.

Interrogatory 2. What is the total assessed value of the lands, tram roads, railroads, and real property situated within the confines of Road Improvement District No. 2 Lafayette County, and what is the total assessment of benefits for road purposes in said Road Improvement District No. 2?

Answer to Interrogatory No. 2. The total assessed value of the lands, tram roads, railroads and real property situated within the confines of Road Improvement District No. 2 of Lafayette

County, as shown by Assessment Roll on file in my office is \$1,443,000.25 and the total assessments of benefits for road purposes in said Road Improvement District No. 2, as shown by said Roll is \$320,825.25.

Interrogatory 3. What is the assessed value of the St. Louis Southwestern (Cotton Belt) Railway Company situated within said district, and what is the amount of benefits for road purposes assessed against said Railway Company?

Answer to Interrogatory No. 3. The assessed value of the St. Louis Southwestern Railway Company (Cotton Belt), situated within said District as shown by said Assessment Roll on file in my office is \$581,960.00 and the assessed benefits against said Railway Company is \$49,606.50.

Interrogatory 4. What is the assessed value of the Louisiana and Arkansas Railway Company situated within said district, and what is the assessed benefits for road purposes against said railway company.

Answer to Interrogatory No. 4. The assessed value of the Louisiana & Arkansas Railway Company, situate within said Road Improvement District No. 2, as shown by Assessment Roll on file in my office is \$119,350.00, and the assessed benefits against said Railroad Company is \$20,080.00.

Interrogatory 5. What is the assessed value of the incorporated towns of Lewisville, Stamps and Buckner, and what is the assessed benefits made against said incorporated towns for road purposes?

Answer to Interrogatory No. 5. The assessed value of the incorporated towns of Lewisville, Stamps and Buckner, as shown by Assessment Roll on file in my office is \$383,270.00 and the assessed benefits are \$57,490.00.

Interrogatory 6. Give the approximate acreage of land within said district excluding that included within the towns of Lewisville, Stamps and Buckner.

Answer to Interrogatory No. 6. The approximate acreage of land within said District including that within the towns of Lewisville, Stamps and Buckner is 72,000 acres.

Interrogatory 7. What is the assessed value of said land, and what is the assessed benefits against said lands for road purposes?

Answer to Interrogatory No. 7. The assessed value of the lands after deducting the assessed value of Railroads and incorporated towns from total assessment within the District is \$364,080.25, and the assessed benefits against the lands for Road purposes is \$212,103.00.

Cross-interrogatory 1. Please state how and in what manner and from what book you obtained the information or statistics given in answer to the several direct interrogatories.

Answer to cross-interrogatory No. 1. I obtained the information given in answers to the several direct interrogatories from Assessment Roll on file in my office.

Cross-interrogatory 2. Please state how and to what extent you have verified the figures given in your answers?

Answer to cross-interrogatory No. 2. I have not verified the figures

given in my answers. This assessment roll was tabulated by Mr. J. R. Stewart, one of the Assessors of said Road Improvement District No. 2, on an adding machine, and I took his tabulated figures as being correct.

J. E. SEARCY.

220 STATE OF ARKANSAS.

County of Lafayette, ss.

I, Chas. B. Wellborn, a Notary Public, within and for said county, do certify, that the foregoing Deposition of J. E. Searcy, was read to, and subscribed by him at the time and place, and in the action mentioned in the caption, the said J. E. Searcy, *the said J. E. Searcy* having been first sworn by me, that the evidence he should give in the action, should be the truth, the whole truth and nothing but the truth, and that his statements were reduced to writing by him in my presence, neither the plaintiff, nor the defendant being present at the examination, in person, or by attorney.

Given under my hand and seal, this the 30th day of April, 1919.

[Notarial Seal.]

CHAS. B. WELLBORN,

Notary Public.

My commission expires Sept. 5th, 1922.

C. H. BARHAM, a witness on behalf of Road Improvement District No. 2 of Lafayette County, Arkansas, being first duly sworn, testified as follows:

Direct examination.

By Mr. Moore:

Q. Your name is C. H. Barham?

A. Yes, sir.

Q. You live at Lewisville?

A. Yes, sir.

Q. And have lived there how long?

A. Thirty-two years.

Q. You were sheriff and tax collector for a number of years?

A. Yes, sir.

Q. And what business are you engaged in at present?

A. Why I am timber cruiser and real estate man for Bodeaw Lumber Company.

Q. You have done considerable surveying in Lafayette County in connection with your cruising timber?

A. Yes, sir.

Q. You were appointed one of the assessors to make the assessment in this road improvement district, I believe?

A. Yes, sir.

Q. Please state just what consideration or what consultation

221 was had when the assessors met in the court house at Lewisville to commence this assessment, in reference to the theory to be used in assessing the lands, the town lots and the railroads.

A. My recollection is we met there and we first checked the acreage, and we agreed that the first mile should be \$8.00.

Q. You are referring to the country land?

A. To the country land. And the next mile should be \$3.00, and the next mile should be \$2.00, and we probably was a day there before we assessed any, talking it over. We was three days in making the assessment.

Q. Then how did you arrive at the assessment of the city property?

A. Why, we [taken] the assessors' valuation; we took the books.

Q. And took 15 per cent of that?

A. Yes, sir.

Q. And how, or on what theory, did you arrive at the assessment of the L. & A. and the Cotton Belt Railroad properties?

A. Well, when we met, you know, I think Mr. Stuart proposed—he said that the benefits to the road district on the Kansas City Southern was \$4,000.00 a mile, and I think he made a motion or something of that sort that we put it at \$3,000.00, and I told him that I thought \$2,000.00 was enough to the mile.

Q. Why was the assessment of the L. & A. railroad and of the Shreveport branch made at \$1,500.00 instead of \$2,000.00?

A. Because there was a difference in the two roads, in the assessment, but we put them at the same. We agreed to put the two roads the same.

Q. How does the physical condition of the L. & A. and the Shreveport branch compare with the condition of the main line of the Cotton Belt?

A. Do you mean as to the value?

Q. No, I mean as to the construction of the road, and of the places that it goes between and of the traffic over it. I will put it this way: Is the Shreveport branch and the main line connected with the outside world just as the main line of the Cotton Belt?

A. Yes, sir; it goes into Shreveport, and there is several lines there.

Q. Does an equal amount of traffic go over the L. & A. railroad as over the Shreveport branch, approximately?

A. The same distance, you mean?

Q. The same distance?

A. No, sir; I would not think so.

222 Q. How about the traffic that goes over the main line of the Cotton Belt as compared with that over the L. & A. and the number of trains?

A. Why, there is a heap more traffic goes over the main line than the L. & A.

Q. Now, in arriving at the benefits that the Cotton Belt Railroad would receive, what items did you take into consideration that would cause or bring about those benefits?

A. Well, we talked it over like this: This public highway through there would enhance the value of the land and would open up at least a half or two-thirds of this wet land that there was nobody cultivating, and we figured, in other words if there was 100 acres of cotton or corn or anything else now and this road caused people to come in and buy this land and open it up that the freight would be double out as to what it is now. That is the way we talked about it.

Q. Now, the river bottom is much more productive than that in the hills?

A. Yes, sir.

Q. What is the character of land between Lewisville and Buckner as to production for hill land?

A. Why, outside of a boggy bottom it is good. We all know that boggy bottom is not very productive.

Q. About what is the width of Dorcheat?

A. Well, from hill to hill, it is a quarter.

Q. Then would you say that the rest of that land is all susceptible of cultivation?

A. Yes, sir; I don't know of any that couldn't be on the entire road.

Q. And do you know the amount of cotton or corn that can be and that was produced on that land last year and the year before?

A. I don't know, no, sir. You know last year was a little bad crop year. I had a little place on that road that made seven bales of cotton on 16 acres.

Q. Now, is that some of this land that is pretty rocky and is hill land?

A. Yes, sir; it is rocky; it is mighty rocky.

Q. Now, with equal cultivation will other lands adjoining and adjacent make crops corresponding to this?

A. Some of them would. You know this gravel land is land that the crop grows faster on than it does this flat land. You take over on what used to be Powers' place, clay in there, but they make good crops if they have a good season. But the gravel land the crops grow better on that than they do on that land.

223 Q. What roads are there, if any, leading north and south from this good road that will come into it and might be feeders for this road?

A. They have got a road out of Hope, of course the county is working it, that would come maybe seven miles to the Hempstead line, a little over seven. Then the other way from Myers' hill what we called the Lewisville and mountain road, is a public road coming in.

Q. Is there a road between Lewisville and Stamps that leads north?

A. Yes, sir. One to Fulton also.

Q. Is there any other road that leads from Shreveport Lake south through the Levee District, through the alluvial land?

A. Yes, sir; leads through the bottoms out into the hills and to Walnut Hill.

Q. Then I will ask you whether or not they are those so called

feeder roads that will allow all this territory to go into this good road?

A. Yes, sir; all these roads I am speaking of will strike this road; they will come right into it at Lewisville. And the other road I am talking about, the Bradley road, will strike it at Shreveport Lake.

Q. Now, when you consider the benefit that should be assessed against the railroad company, did you consider that taking this as a unit or whole, as a going railroad, or did you try to split that up into ties, rails and switch stands?

A. No, sir; I never thought of that. I was figuring that the benefits that the road would get from the improvement road district, and by the road being opened up around it, would give them a benefit of what we put in. That is the way we talked it over when we was together.

Q. Is it still your opinion that that benefit will be received from the opening up of the land?

A. Couldn't see anything else. The crops has doubled on that road in the last five years. The crops will make as much again.

Q. Why?

A. Because it is nearly all opened up. After you get three miles out of Stamps it goes down to McKemie, and one branch crosses Dorcheat. We have got a good road there. It is settled up everywhere. You can't hardly buy land on it.

Q. That road comes into this road as a feeder?

A. Yes, it is in the corporate limits of Stamps.

Q. Then judging from what you [save] seen in the past, you think this road caused the opening up of that territory?

224 A. I think so, yes, sir.

Cross-examination.

By Mr. Gaughan:

Q. Where does the road that you speak of there at Stamps go to?

A. Why it goes, as I said to you, it goes right down by two churches, one that is called Pleasant Grove. The people that know that country call it Nubbin Ridge. It goes down through that country and turns across Dorcheat and into Columbia County. And the other end of it goes to Lewisville.

Q. How long has that road been built?

A. Which road?

Q. The one you just described.

A. About three years or four.

Q. Was it built by putting gravel on it?

A. Yes, sir.

Q. Was it graded up and graveled?

A. Yes, sir.

Q. All of it graveled?

A. Every bit of it to the Columbia County line.

Q. In other words, it was built just like the road was built to Lewisville a few years ago?

A. It is a better road than that.

Q. Now, as a matter of fact, there has been a road for years and years right where this proposed road is now?

A. Yes, sir. No, sir; not where this road is located. It ain't been so many years. It has been a good many years too.

Q. You say the road where it is now located has been there for a good many years?

A. Yes, sir; I reckon twenty years.

Q. The road has been good enough to travel from Stamps to Lewisville and then on from Lewisville down to the Moses place and from there down to Duck Roost in automobiles, for the greater part of the year?

A. No, sir, it has not. It has been times when you could not get out in the field in an auto.

Q. I didn't say all the time?

A. We could go in the summer; couldn't go in the winter to do any good.

Q. Would you think that there was as many as ten automobiles one evening at that Duck Roost that went down by the Moses place in December?

A. Well, yes, some Decembers.

225 Q. Would you think now that you couldn't get down there with a car now?

A. Oh, I have been down to the Duck Roost in cars and fishing but we had not had all the rains we have had.

Q. So it would depend on the condition of the weather whether you could go?

A. Yes.

Q. But the road has been there all this time?

A. Yes, sir.

Q. Now practically all of the lands that are near Red River that are on what we call the Red River Sandy land have already been cleared, that are in this district?

A. Oh, no, no sir.

Q. They haven't all been cleared?

A. They have been cleared around the river there.

Q. That is what I am talking about. The lands that haven't been cleared in the bottom are behind those hills and those high lands that join the river?

A. Yes, sir, that is right.

Q. Isn't it a fact that your drainage and good road won't put those lands into cultivation?

A. Some of it won't and some will. We have got a hundred right down below this. We have what we used to think nobody would ever want it. There is only two or three farms been opened up there and people working it.

Q. They have been opened up three or four years?

A. Some of them have.

Q. Those farms were opened up before this road district was established?

A. Some has and some wasn't.

Q. Now Mr. Barham, these lands that are not in a state of cultivation embraced within this district are what you call timber lands, are they not?

A. Well, it might have been termed timber land but the timber has all been taken off.

Q. That is the old growth of timber has been cut off?

A. Yes, sir.

Q. But there is a young growth of timber there now?

A. Yes, sir, some hickory poles.

Q. Isn't there pine?

A. No, sir, not in the hills; there is some pine but very little.

Q. How many times has that land been cut over?

A. Why I suppose three times.

Q. Within your knowledge?

A. Yes, sir. I knew it before anything was cut over.

226 Q. It has been cut over three times within what length of time?

A. Thirty-two years.

Q. Were they cut over the first time thirty-two years ago?

A. Yes, sir, when I moved to Lewisville I went broke there in the saw mill business; didn't have enough to flag a bread wagon with left. Old man Barnes sold about that time. The Bod-saw Lumber Company showed up and bought out Sewell. That was a virgin pine country when I came here and it was cut over within four or five years from that time. Well the Sunny South cut through there in about four or five years and that place where I located was cut over by me and then Capt. Alexander cut over that. I think that has been cut over twice. That is, next to the river.

Q. That timber grows very rapidly doesn't it?

A. It is owing to where it is, Judge. If it is along low land pine timber you find it, it grows pretty rapidly, but on bald hills it grows mighty slow.

Q. The poorer the land the slower it grows, the higher the land?

A. For instance, the other day I had occasion to see how timber grows. I was cutting the right of way. The party we bought the right of way of sold us that timber eight years ago. From [then] inches up, I think the courts decided we have to pay. I cut down three trees and I found one tree that had grewed 2 inches in eight years. I found another that hadn't grewed an inch. I have seen them that didn't grow an inch in four years.

Q. Well, it is a fact that you cut over this pine timber about every fifteen years?

A. Well, these little mills come in and cut it about every fifteen years.

Q. Where this pin oak grows you find it grows about as rapidly as pine?

A. Yes, sir.

Q. That is being made now into ties and stave bolts, isn't it?

A. Yes.

Q. Now when lands that are timber lands that are embraced within this district are cleared up and put into corn and cotton, or

whatever else you want to put it into, it will not produce any more timber unless the farming that is on that land ceases?

A. No, it would not of course, after it is cleared up and I would like for you to look at this and see how clean it is of pine. You know I have seen them cut from twelve inches up but today they cut logs that two men can pack them and put them on a wagon, will square four inches.

227 Q. Well, that timber through there is about like anywhere else in south Arkansas?

A. I don't know.

Q. It is the same kind of pine?

A. Yes, sir.

Q. Grows on the same kind of land?

A. Yes, sir.

Q. Now as a matter of fact, the chief tonnage that the Cotton Belt Railroad has received from the territory embraced within this district for the past twenty years has been lumber?

A. Well, I don't know about the last ten. I suppose the first of the twenty years they got lots of lumber.

Q. They are still shipping a great many staves and lumber from that territory?

A. Yes, but mighty little of that until they got to taking these pine ties. Until they got at that there was no tie timber, Judge.

Q. Now when these lands are cleared up and put in cultivation, all of them, the handling of forest products is over?

A. I suppose it would be. I suppose there would be some ash bolts out of the bottom and some tie timber out of the bottom.

Q. Now do you think that you could be able to say how much increase there would be in tonnage off these lands if these lands were put in farming operations, over what would be if they were permitted to remain as timber and as pasture lands?

A. Why, those hills and flats, it would take fifty acres for one cow. I know what I am talking about. I sold a fellow a thousand acres of land for the Bodeaw Lumber Company. He told me what he was going to do and I says to him: "Hicks, it won't do; you will have to turn them cattle out of there or they will starve to death." So last fall he had them to die. This country is no place for a pasture.

Q. Do you mean to say that when you cut the timber off this land that it is so poor it won't grow grass?

A. No, sir, I don't think so. What little grass is there is full of water and no account for a cow.

Q. But it is down in the bottom?

A. It is better in the bottom. There ain't no pine in the bottom.

Q. And so there will be good grazing if the timber is cut off?

A. Yes, sir, especially in front of the river.

Q. Don't these pine flats grow good grass when the timber is cut off?

A. No good to my judgment about it; I don't think so.

Q. Now then, as I understand it, you figured that by the build-

ing of this road, that there would be a certain per cent of these
228 lands that would be turned into farming that had not been
turned into farming before?

A. That is just the way I figured.

Q. And you believed to some extent there would be an increase
to the railroad traffic?

A. I do. Here is the way I figure. We will say I have got 200
acres of land out there and I have got one hundred in cultivation.
The pine timber is all gone and I would clear up the other hundred
acres. Of course, the other hundred would be cleared up as cotton
land. Well, that cotton is bound to go out of there on the railroad.

Q. Well, now you didn't know where those products would go to,
whether they would go to Stamps for shipment or whether they
would go to Texarkana, or what proportion of it would inure to the
benefit of the Cotton Belt Railroad, if any?

A. Well, Mr. Gaughan, the County Seat. There at Stamps is a
big factory. There is very little cotton goes to Stamps, except there is
some people go there and trade on credit and I suppose they market
the cotton there. Those people that carry cotton there it is because
they owe.

Q. Does Stamps seem to be a better short cotton market?

A. I don't know whether it is the fault of the cotton or the buyer.
I couldn't tell you about that. I never figured on the L. & A. on it.
Of course, we go to Stamps. There is stuff goes right out of Lewis-
ville to the L. & A. but there is stuff comes to Lewisville.

Q. All the cotton that goes to Stamps is shipped over the L. & A.?

A. I see the Cotton Belt backing cars into the platform.

Q. It seems to me like the quickest way to get out to the Missis-
sippi River would be by the L. & A. It could go on the L. & A. or go
to Shreveport to Alexandria?

A. I heard them testify today that it went to Natchez. The L. &
A. never has been in Natchez yet.

Q. If it don't go to Natchez it don't go far from it?

A. I have been to Vidalia but I didn't have time to go across
and see what sort of place Natchez was. I heard some fellow say it
went to Natchez here today.

Q. Now you have never had any practical experience in testing
out the effect that the building of a highway parallel to a railroad has
on it?

A. No, sir.

Q. And your estimate then was simply based upon what you
thought would happen?

A. Yes, sir, I thought and think it yet if we get a public highway.
I don't know whether we are going to get it; I think it will
229 double the population and the cleared land; I believe that.

Q. But you just believe that because you don't know it and
you have got nothing to base that on in the way of experience?

A. No. In other words, just to show you, up until they went to
making pine ties on your road you wouldn't haul one car of oak
ties where now you haul fifty cars of pine. The road is full of them.
If the lands open up in place of hauling from Lewisville three thou-
sand bales of cotton over your road you will haul six thousand.

Q. But we would not get any more ties?

A. Well, it would be ridiculous for the country to grow up to give the Cotton Belt ties.

Redirect examination.

By Mr. Moore:

Q. Mr. Barham, referring to the cutting of pine timber which started 32 years ago. State when you first went into the business whether you cut more than two-thirds of the timber off of the land?

A. Well, I expect I did, more than two-thirds.

Q. Did you leave all trees from 12 to 14 inches standing there because they were not worth cutting?

A. Yes, sir.

Q. Then you say that has been cut over twice and some three times?

A. Yes, sir. Mr. Henson is cutting some that has been cut three times.

Q. Take the way that pine timber is being cut today down to those bolts, how long do you think it would take on that land before you could get another crop of pine?

A. Thirty years.

Recross-examination.

By Mr. Gaughan:

Q. That all depends on how big you would want it to be?

A. Well, it is all being cut now; anything that will square six or eight.

Witness excused.

J. M. HUDGINS, a witness on behalf of Road Improvement District No. 2, of Lafayette County, Arkansas, being first duly sworn, testified as follows:

Direct examination.

By Mr. Moore:

Question. Is your name J. M. Hudgins?

Answer. Yes, sir.

230 Q. You live at Stamps?

A. Yes, sir.

Q. And you are one of the commissioners, not assessors, of this road?

A. One of the commissioners.

Q. How long have you lived at Stamps and Lewisville?

A. I went to Lewisville in 1895, and been at Stamps since 1903.

Q. You are station agent at Lewisville?

A. Yes, sir.

Q. And then went to Stamps and took charge of the Stamps Ice Factory, I believe?

A. Yes, sir.

Q. Are you well acquainted with the road between Lewisville and Stamps?

A. Yes, sir.

Q. Been over it many times?

A. Yes, sir.

Q. Please state to the jury whether you were largely instrumental in helping to make such a road as it was prior to the commencement of this road district?

A. Yes, sir, I took the initiative in building that road built by private subscription. The county, I suppose, built about one mile of it.

Q. What is the approximate distance of that road?

A. Six miles.

Q. How much money was spent on building that road?

A. My recollection is I made up a thousand dollars.

Q. During good weather when it was dry you had what character of road after you finished that?

A. Well, we had a fairly good road. Of course, the gravel being so thin it was dug out in chug holes.

Q. And it had no ditches or drains?

A. No ditches or drains.

Q. What was the condition of that road during the winter seasons?

A. After we graveled it or before?

Q. After you graveled it with the thousand dollars worth of gravel to the six miles?

A. When not an excessive amount of rain it was good, but on account of not having any drains when there was a good deal of rain it would get boggy.

Q. Then or was not that such a road that you could go over it at forty miles an hour at any time of the year?

A. Yes, sir, you could go over it at twenty-five miles an hour all right.

Q. But you got into chug holes all the way did you not?

A. Yes, sir.

Q. Are you acquainted with the character of lands between Lewisville, Buckner and Stamps?

A. Yes, sir.

231 Q. Please state whether all that land in there is susceptible of cultivation?

A. I would consider it so. I did not consider it a few years ago but the land I thought four or five years ago not susceptible of cultivation is now producing even more.

Q. Please state whether that land commenced to go in cultivation when you started building this first gravel road with that thousand dollars?

A. Yes, sir, I don't think there was but two or three houses between Stamps and Lewisville at the time I built that road, very little open land.

Q. How is the density of population between Stamps and Lewisville, twice or three times?

A. Well, I would consider it about twice as much. It is not very densely populated yet.

Q. From your knowledge of that hill country, within say, five years after the completion of this gravel road, what is your opinion as to the increase in cultivation of land, and increase in population that will take place five years from now, as the result of building this good road?

A. Well, I would think it would increase fifty per cent.

Q. Are the majority of people who have bought homes and are settling on that white people?

A. Yes, sir.

Q. What character of dwelling houses have been going up since this road has been projected?

A. There has been a better class of buildings, northern people are moving in there and building bungalows, much better dwellings than we had before.

Cross-examination waived.

Witness excused.

W. P. NASH, a witness on behalf of Road Improvement District No. 2 of Lafayette County, Arkansas, being first duly sworn, testified as follows:

Direct examination.

By Mr. Moore

Q. What is your name, [age] and residence?

A. W. P. Nash, thirty-eight; Lewisville, Arkansas.

Q. What is your present business?

A. Mercantile business at Lewisville.

Q. And for the last ten years what was your business there?

232 A. With the exception of about eight months there in 1917 that I spent in California, I have been in the mercantile business there.

Q. Have you as a side line had any other business besides that?

A. I handled real estate for the last ten years as a side line.

Q. Please state whether as a real estate man you had any connection or worked with the agricultural or emigration department of the Cotton Belt?

A. I started to working in connection with them with Mr. Guy Stewart when he first came with the company and I continued to correspond with him and aid and assist him in any kind of development along the Cotton Belt.

Q. What was the endeavor of Mr. Stewart as such emigration agent?

A. He tried to do two things, one of the first things was to educate the people in this part of the country to diversify, have better im-

provements, and to do that we needed emigration to build up the country and then to bring the people down from the middle west that were interested and sell them the land in this section.

Q. Were you connected at all with Mr. Beaty?

A. Well, he was working with the Cotton Belt some little but not as much.

Q. Did he succeed Mr. Stewart?

A. No, sir.

Q. Who did?

A. Will Doyle was there a while.

Q. Then did not the Cotton Belt Railroad until the time you left to go to California, which you said was two years ago, keep someone that was working in that section as emigration and agricultural agent through there up and down the line until the war started?

A. They didn't do anything very much for the last five or six years.

Q. You are acquainted and have been for a number of years with the territory adjacent to this road are you?

A. I have.

Q. Both the bottom and the hill territory?

A. I have.

Q. In your opinion can practically all of the hill land save a small stretch in Bodeaw Bottom be cleared and put in cultivation and used for homes?

A. It can. There are in a few places low lands [*low lands*] but in all of that flat country adjacent to Lewisville within a quarter of a mile is a draw that serves as a ditch. I have seen from 233 experience any land can be drained with a surface ditch and it can be practically all put in cultivation.

Q. What about the bottom lands? Is there any considerable percent of that? That is still susceptible of cultivation if drained?

A. I think that possibly twenty-five to thirty per cent of the unimproved land in the bottom could be put in cultivation and would grow good crops if drained.

Q. With drainage could all that land be put in cultivation in the up-lands?

A. Absolutely all of it.

Q. What in your opinion, from information gathered from living in that country as a real estate man working with the emigration agent of the Cotton Belt, will be the effect of settlement, cultivation of lands in this district from the building of this road?

A. I think it will increase the lands,—more of it will be put in cultivation and induce settlement in that section.

Q. What, in your opinion, will be the effect on the Cotton Belt in so far as increased traffic is concerned from the building of the road and the additional land that will be cleared and worked?

A. In my opinion, increased production would increase the traffic.

Q. You think there will be increased production, do you?

A. I do.

Q. Prior to this period that you spoke of having moved to California, did you live for several years in California as a young man?

A. I did live there for three years.

Q. Did you notice on this last trip a difference between the roads—first, what section of California were you in?

A. Southern California, principally Los Angeles.

Q. Both the first and last time?

A. I did.

Q. Did you notice a considerable difference between the roads in that country between the first and last time?

A. I did.

Q. What effect if any, did those roads have upon the farming lands and the smaller country communities throughout that section?

A. The class of people were much better because they could live on [there] ranches and drive into town, more especially Los Angeles.

Q. What have you to say in reference to the land in cultivation when you were first there and they didn't have the roads, and the land in cultivation in 1917 when you returned?

A. Well, as far as being in cultivation, there was not so much difference, possibly twenty-five per cent. When I was there the first time the majority of the land was in barley and oats. They could not get water on it. It is irrigated country in a majority of places and that was not very profitable now. I suppose sixty per cent are in truck and fruit and it is a class of farming, a commodity that brings much more money.

Q. The climate that you mentioned is just the same as ten or fifteen years ago?

A. The water and ditches have helped some. They had the water and ditches, of course, it has been developed, but the same conditions exist.

Q. In your opinion has or have not the roads been largely instrumental in bringing about the better farming and more intensive farming that you have mentioned?

A. It appears to me that the roads have had the greatest to do with it in that section.

Q. Then from the knowledge that you have gained as to roads and truck farming and what you know of the territory, in this road district, what effect do you think, if any, the building of this road would have upon the character and movement of the products raised on the lands in the district?

A. I am a great believer in good roads and believe it will materially increase the value of your lands and bring unimproved lands into cultivation.

Q. Have you handled in your business as a merchant considerable quantities of cotton that you have shipped into Texarkana from Lewisville?

A. I have.

Q. Please state what is the arrangement made, or how you handle it in reference to shipments of cotton to Texarkana and the payment of freight on same?

A. Well, I have not had any experience in the last few years. I have shipped a lot in but it had been sold at Lewisville. We used to ship it in and it cost \$1.25 a bale and then we would have a re-

fund of a dollar, making it cost 25 cents. There are other places where it cost nothing. It was the understanding that if the same road got the same quantity out, that it would take the competitive rate out to the sea or gulf points.

Q. Then the net cost of bringing it is only 25 cents?

A. Twenty-five cents or nothing, has been my understanding.

Q. And that goes in what is termed milling in transit?

235 A. Yes, sir.

Cross-examination.

By Mr. Gaughan:

Q. Mr. Nash, California is a state where a good many tourists go?

A. Yes, sir.

Q. One of the main sources of wealth out there is the tourist?

A. Yes, sir.

Q. In other words, they capitalize the tourist?

A. Yes, sir.

Q. And try to get all his money?

A. Yes, sir.

Q. Now the first move out in California before the roads were built was to get irrigation?

A. They had this irrigation when I first moved there.

Q. They had irrigation before they had the roads?

A. Yes, they had to have irrigation to grow anything except wheat and barley and something that they planted in the winter season.

Q. Now have you ever had occasion to investigate into this question: Do you know the number of acres of land in the south that has never been cleared and not in cultivation of course, that are capable of being put in cultivation?

A. No, in a general way. I couldn't give the figures. I have seen the statistics.

Q. Do you know what per cent of lands in the south are capable of being put in cultivation?

A. A very large per cent.

Q. Do you know that there would be five hundred acres for [ever-] farmer in the United States?

A. No, I didn't know that.

Q. Well, from your general knowledge of the south, would you think that the territory embraced in this road district outside of Red River bottom would be considered a fair average of other lands in the south taking them as a whole?

A. I candidly believe that the character of hill land that is comprised in this district is above the average of the hill lands and the flat lands in the south, from the reason that in the southern state there is some mighty poor land, and in the southern part of the southern states there is pine flats that is absolutely no good. We have what we call pine flats, but there is post oak and pin oak flats and the people settling in there have got a different opinion of it.

Q. Now there are a great many lands in Arkansas that are
236 similar to these lands?

A. Yes, sir.

Q. Large quantities of them now undeveloped?

A. Yes, sir.

Q. Do you know how many road districts were formed by the last legislature in Arkansas?

A. I don't have the statistics. I haven't kept up with the names of them; I know about them.

Q. Do you know how many districts have been formed under the Alexander road law in the last two years?

A. I couldn't say.

Witness excused.

C. S. CHRISTIAN, a witness on behalf of Road Improvement District No. 2 of Lafayette County, Arkansas, being first duly sworn, testified as follows:

Direct examination.

By Mr. Moore:

Q. What is your name, occupation and present place of business?

A. Civil Engineer and live in Texarkana.

Q. Are you at the present time, and have you been since their formation, the engineer of the Miller County Levee District No. 2 and Garland Levee District?

A. I have.

Q. Are you also and have you been since its organization the engineer for drainage District No. 1, Homer Drainage District and Drainage District No. 2?

A. Yes, sir.

Q. Those are all drainage districts of Miller County, are they not?

A. Yes, sir.

Q. Are you at present engineer for District No. 1 and Lone Prairie Drainage District?

A. Yes, sir.

Q. Are you engineer, and have you been, of Road District No. 1 and 2, Lafayette County?

A. I have.

Q. Those are all road and levee districts in Lafayette County, are they not?

A. Yes, sir.

Q. Have you as such engineer, had occasion to investigate the benefits received from levees, roads and ditches, by lands, and the benefits received by railroads from the increased production from said lands?

A. I have.

Mr. Gaughan: We will ask that the witness' testimony be confined to road districts improvements.

37 Mr. Moore: I am just bringing out his general qualifications and the experience that he has had in various lines of improvement.

Q. Have you been the engineer in charge since the organization of the big Road District now nearing completion in Miller County, Arkansas?

A. I have.

Q. How many miles of good road will be completed this summer or early fall in that district?

A. Sixty-eight miles.

Q. What has been the effect upon the lands in so far as new lands going into cultivation and settlement, of the Road district in Miller County?

A. The land has been changing hands so fast along the route of the road that you can't keep track of them and there is an enormous amount of land going into cultivation. There are people [—] come into my office practically every day and ask about these various roads and they are purchasing land and putting it into cultivation.

Q. You mean it has been sold?

A. Yes, sir.

Q. And haven't either the party who has bought any tract put it in cultivation, or those to whom he sold put it in cultivation?

A. That was the fact.

Q. Then from what you have seen actually demonstrated in this road district, what in your opinion, will be the effect in so far as the settlement and cultivation of land is concerned in this road district in Lafayette County?

A. Well, a very considerable part of it will go in cultivation.

Q. And that will mean an increase of so much in production, will it mean an increase in products in proportion to the additional amount put in cultivation?

A. Unquestionably.

Q. You as engineer, are acquainted with the location of this district, of course?

A. Yes, sir.

Q. Please state whether from just west of the town of Lewisville the road, instead of being as it shows on this map, for some distance north of the right of way of the railroad goes right up to the right of way fence?

A. It joins the right of way of the railroad.

Q. What has been a usual condition of that right of way from the tank at Lewisville to the crossing of the road, in so far as drainage is concerned?

A. Well, it had not drained. The water stood on it until the rain evaporated, the sun dried it out. It was held in two ways. There was no way for it to run over the railroad dump. I mean the dump of the old road, or the dump of the railroad.

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Q. There was only one opening along the railroad between Lewisville and the crossing of this road over the Cotton Belt and they had 2 24 inch pipes about, well, I presume about 5 or 6 hundred feet west of the city limits.

Q. Was it the only opening along the railroad, the only opening

until you reached the trestle just adjoining where the road crosses?

A. Yes.

Q. In building this road where it has been completed and in the work that is now under progress, what is being done in the way of digging a ditch that will drain both the dirt road and the railroad?

A. From about the city limits of Lewisville, station 630 on our survey, we have [la-d] out a ditch down to the trestle at the point where we cross the railroad with our road. That is running west. In fact we have at that point made the building of the dump incidental to the construction of the ditch without wasting the dirt from the ditch. We are using the dirt from the ditch in the road, leveling it down and making a road out of it. At various points where the water is held at the present time or would be held in the future we are putting in pipe so as to drain the dump of the road bed into the ditch we are constructing.

Q. What arrangement has been made to allow the drainage water falling between the railroad and the dirt road to escape in that ditch?

A. We are putting pipe under our road for that purpose.

Q. Before that ditch was started was there any way for the drainage water falling in the western section of the town of Lewisville and in the country north of the railroad from there to this trestle to a mile and three-quarters to two miles east to get away save in these narrow openings you have mentioned in the railroad dump?

A. Along inside of the town of Lewisville and just east of the water tank there is a 30 inch vitrified culvert along the railroad. That is inside the town. After you leave town there is only one opening under the railroad. That is about two 24 inch pipes up five or six hundred feet. That pipe has no outlet after it goes through. It just stands in the pipe, in fact there is no way for it to get away.

Q. You mean to say there is no drainage on the south side?

A. No. The country is very flat along there; water gets in there and stands during the rainy season. That is practically a sea of water all the way through there.

Q. How much of this ditch has already been completed?

239 A. About a mile and a half, I presume.

Q. With the completion of this ditch that is to be dug out and thrown into the road bed and the placing of these pipes under the road bed between the ditch and the railroad right of way, what will be the effect, so far as drainage is concerned, to the railroad?

A. Well, it will dry out; prevent it ever reaching the railroad, while what would fall between the road and the railroad will collect in ditches and run out through the pipe.

Q. In your opinion will that be of benefit to the railroad?

A. It will be of some benefit to it.

Cross-examination.

By Mr. Turney:

Q. Are you a graduate of any school of engineering?

A. No.

Q. You are a practical civil engineer?

A. Well, you might say so.

Q. Have you ever had any experience on a railroad?

A. I have.

Q. When?

A. From 1901 to 1903 I was in construction work on the Missouri Pacific Railway both on the Memphis, Helena and Louisiana branch in Southern Arkansas, and on the White River Division in northeast Arkansas. I also worked for the Choctaw, Oklahoma & Gulf in Oklahoma, from Henryetta to Ardmore. I was also on the Missouri and North Arkansas.

Q. What were your duties in the construction department?

A. I was instrument man until I went to the M. & N. A., when I was Division Engineer.

Q. Now, how much water do you think stands on that right of way?

A. I couldn't say definitely. I know in places it stands [probably] a couple of feet deep in the barrow pits.

Q. All the time?

A. Until it dries up in the summer time.

Q. Then it stands there all winter?

A. Yes.

Q. What is the damage to the railroad that that water does standing there?

A. Merely to soften the dirt dump.

Q. Is that all?

A. Well, unless you take into consideration the health.

Q. What effect does that have on the operation of the railroad?

A. It increases the cost of up-keep.

Q. How about the use of it?

240 A. It can be used.

Q. I mean as regarding speed?

A. Well, on a safe track you know you can make speed.

Q. How much dump is there where the water stands?

A. Two and a half feet.

Q. Then you mean to say that the water comes to within a half a foot of the ties?

A. I said it stood about 2 feet in the barrow pit.

Q. How far is that from the top of the dump?

A. Probably two feet.

Q. How deep was the water on the other side of the track?

A. On the south side.

Q. Yes, sir.

A. I couldn't say.

Q. Does not that have a material effect in determining whether

or not the water is injurious to the track, the amount that is on the other side?

A. There is some water over there, but as to its depth I couldn't say.

Q. Can you state, without knowing that, whether or not the water softens the dump?

A. Most unquestionably.

Q. I am talking about a railroad embankment.

A. It will soften any dump, I don't care where it is.

Q. What could the railroad have done to have avoided this water standing there?

A. They could cut a ditch.

Q. Did they have a ditch?

A. They had at one time, but have allowed it to grow up and fill up.

Q. If they had thought it worth while they could have obtained the same benefits by cleaning up the old ditch?

A. Yes.

Q. What would it have cost them to clean out the old ditch?

A. I couldn't say. If they cut one like we are cutting it will cost probably \$4,000.00 or \$5,000.00.

Q. Does your ditch cost \$4,000.00 per mile? What is the total cost per mile of your road?

A. On estimate, about \$6,500.00.

Q. What kind of road are you putting?

A. Gravel.

Q. How many inches?

A. Eight.

Q. What is the cost of the metal alone?

A. It depends on the haul.

Q. On an average per mile?

A. About \$2,400.00 per mile.

Q. How much are you allowing for grading in the hills where this is?

A. I presume—I don't remember just what it is.

Q. Does it exceed a thousand dollars?

241 A. Yes, I know it exceeds that.

Q. And that includes ditches on both sides?

A. Well, understand that: this ditch is in places as much as five or six feet deep. It had to be to take the water out.

Q. It didn't have to be to take the railroad's water out?

A. Yes.

Q. Was it five feet deep?

A. I don't know.

Q. You don't know what it would have cost to take that water off without building a road?

A. No. You couldn't have dug a much smaller ditch [than] we have dug in there.

Q. Does the ditch drain any other property?

A. Yes, sir. The drainage comes off the town of Lewisville, off the west section.

Q. Do you know whether any difference in the assessment of benefits against property in West Lewisville is made on account of digging this ditch?

A. No, sir; I don't.

Q. Does that ditch drain any other property in the district?

A. Well, it drains the land along on the side.

Q. All the way along?

A. Yes.

Q. And you have ditches all the way along that drain the property?

A. Not in all cases; in that particular case it does, however.

Q. Is there any part of the country you go through where the water goes both ways and you do not need any ditches?

A. No.

Q. Do you know whether any difference in assessment was made on this account on lands that require drainage and those that do not require drainage?

A. No, sir.

Q. You were not assessing the benefits to anybody for the drainage except the railroad?

A. I wasn't making the assessment.

Q. So far as you know the railroad is the only one assessed for the benefits of the drainage?

A. I don't know that they were assessed.

Q. But you do say that there was other property in the district that was [benefitted] by drainage?

A. Yes.

212 Q. And that there was a considerable part of farm lands that were not [benefitted] by drainage?

A. Well, there is very little farm land probably that we [benefitted] by drainage. In a hill country you don't do much drainage except to let it across the road, and let it get away on the other fellow.

Redirect examination

By Mr. Moore:

Q. Mr. Christian, you were asked whether you graduated from an engineering school. You are a member of the Engineering Society?

A. Yes, sir.

Witness excused.

C. D. PURDON, a witness on behalf of St. Louis Southwestern Railway Company, being first duly sworn testified as follows:

Direct examination.

By Mr. Turney:

Q. Your name is C. D. Purdon?

A. Yes, sir.

Q. What is your occupation at the present time?

A. Civil engineer.

Q. Connected with what company?

A. St. Louis Southwestern.

Q. In what capacity?

A. Consulting engineer.

Q. How long have you been connected with the St. Louis Southwestern?

A. Almost ten years this last time, which is the third time.

Q. How long in the aggregate?

A. About 16 years, I think.

Q. In what position?

A. Well, I was assistant engineer, locating engineer, assistant chief engineer, chief engineer, and consulting engineer.

Q. Are you familiar with the railroad road bed, right of way and physical construction of the road in Lafayette County Road Improvement District No. 2?

A. I am fairly familiar with the length of the road; some parts better than others.

Q. It has been shown here that for a stretch of possibly a mile or a little more, going west from Lewisville, the drainage on the right of way is insufficient, and that water at certain times of the year stands in the barrow pit to a depth of possibly two feet. Would you consider that as a detriment?

A. Above the natural surface?

Q. Along in the barrow pit below the pump?

A. I would not consider that would do any special damage.

Q. Why not?

A. From experience. We have two or three places on the road where the water stands all the year round. There is one place at Tipton, I don't think I ever saw the ground there yet. I questioned the roadmasters a good many times and there is no damage from it. There is another place on the Little Rock branch where it has just lately been drained by one of these drainage districts which drains the water that stood all the year around and never had any special trouble.

Q. In order to soften the road bed, increase the maintenance cost and retard the speed of the railroad, what must be the character of the standing water?

A. The only thing I can say about that is from a paper of the American Society of Engineers, which was in regard to building what they called a "bankette," a lower levee supporting the levee. That is built to prevent the water seeping through the main levee and making it soft, and *there* experience was that unless the water stood about three feet and a half high on the embankment the bankette was not necessary, that is that the water would not soak through the entire width of the levee unless it was three feet high on one side.

Q. Why wouldn't it?

A. Because the obstruction to the flow of the water would prevent it.

Q. Is that generally accepted to be true among the engineers?

A. It was published in the American Society papers, which are open to discussion by the members of the Society, and I can't remember that anybody contradicted it.

Q. What is your idea of it from your personal experience?

A. I would rather not have the water there, but I have an experience that a little water standing there would do no harm.

Q. Where it does not extend above the barrow pits?

A. I never noticed any damage, where the water does not stand above the natural surface.

Q. How far are the barrow pits from the dump?

A. Generally allow a berm of five feet.

244 Q. That would mean, then, that the water in order to get to the road bed would have to go through five feet of soil?

A. No, if the water were up to the top of the natural surface it would still be five feet from the toe of the embankment.

Cross-examination.

By Mr. Moore:

Q. As a matter of fact, Mr. Purdon, do you not know that there is no berm along this stretch of levee running from about a hundred yards west of the tank to the first large opening where the road crossing goes south, to the first trestle west of Lewisville?

A. No, I couldn't say, Mr. Moore. I don't recollect the road so minutely as all that.

Q. Were you the engineer in charge at the time some fifteen to eighteen years ago, when they had the steam ditcher working for a good many months, at any rate, up and down the Shreveport branch and in and near Lewisville?

A. No, sir I was on the Santa Fe at that time.

Q. Then, you do not know that at that time a ditch was dug all along by this very point to let off that water?

A. No, sir.

Q. And that that is the ditch that has filled up?

A. They do fill up sometimes.

Q. At the place where you have mentioned where water stood against the dump two feet, what is the height of the dump?

A. I didn't say two feet. I said six inches to a foot. I imagine the bottom of the ballast was some two feet and a half.

Q. Doesn't it make a very considerable difference how high the dump is as to the effect that standing water will have on it?

A. Oh, yes.

Q. Do you not know in building roads, I refer to good roads not railroads, that the greatest difficulty a road can have and the thing that brings an injury to it sooner than anything else, is to have water standing on its side softening it?

A. Nearly all the damage to anything is caused by water standing.

Q. That is because the water goes through the metal surface?

A. Yes.

Q. Now, where water stands along the road, does it not have the

same effect as it does along the railroad? Save the hammering of the engines and cars going over it?

A. No, sir; for this reason; the tire of a wagon is some three inches wide, and the whole weight of the wagon comes on these four points. The weight of the engine is distributed so you have a very great distribution of weight per square inch of ground.

Q. When you figure the weight of a wagon and the average tonnage carried by that, the width of the tires, and figure the weight of these large engines and the surface space of the ties on which it rests, has the wagon an advantage or disadvantage? Is there a greater or less weight per square inch on the road from the wagon than from the large Mogul engine?

A. I should say that the load from the wagon wheel was more destructive. Of course, theoretically the substance of the road under the wagon wheel [wheel] brings a greater bearing surface into play.

Q. You say it is more destructive, but do you not know there is greater weight per square inch from the two horse wagon than there is from the large engine with the ties that are under it?

A. No, I don't.

Q. I will ask you whether it would not be a very great advantage to the dump at this point, which has been testified is about two and a half feet high, to have carried away water standing from six inches to two feet from the bottom of the barrow pit?

A. I should think if there had been need of anything of that kind I would have heard something about it, and I didn't.

Q. Of course, of this particular place, you as chief engineer of the entire system, can have no particular knowledge?

A. No, sir.

Witness excused.

E. L. MARKHAM, a witness on behalf of St. Louis Southwestern Railway Company, being first duly sworn, testified as follows:

Direct examination.

By Mr. Turney:

Q. You are division engineer for the Cotton Belt?

A. Well, I was previous to May. I am now principal assistant engineer.

Q. Prior to that time, before your promotion, you were division engineer at Pine Bluff?

A. Yes, sir. I have been assistant engineer and division engineer at Pine Bluff since September, 1906.

Q. As such do you have charge of the track of the Cotton Belt running for a little over a mile west of Lewisville?

246 A. Well, I would not have charge of the track. I am so closely associated with the superintendent who has charge of the track that at any point where there is continued bad track caus-

ing slow speeds I am likely, or will be called on to make the necessary survey to remedy the matter.

Q. Are you familiar with the track described as running from the water tank at Lewisville west to the point where the proposed road improvement district No. 2 crosses the railroad?

A. Yes, sir.

Q. Are you familiar with the drainage facilities of the railroad at this point?

A. Yes, sir.

Q. Are there any needed?

A. There is times of the year that water stands on both sides of the track, but never to such an extent that to my knowledge it has been necessary for me to slow up the speed of passenger or freight trains on that account.

Q. Have you ever noticed any softening of the dump?

A. No, sir; I do know in 1903 I was rodman in a party that drove ballast stakes down to the foot of Nigger Hill, and that never in my experience have I had more resistance in hammering stakes. I did the work personally and it was work.

Q. Mr. Markham, has there ever been a ditch there?

A. Yes, sir; in the years gone by we had a steam plow, that is it was operated by steam, called the Doddridge ditcher, which carried a huge plow, and throughout this district where the railroad dump was not too high this ditcher cut continuous ditches, and it did so in this particular locality.

Q. You are familiar with the amount of water that stands there in the wet season?

A. I have noticed it from time to time.

Q. What would be the cost to the railway company under the present circumstances to entirely do away with water standing there at any time?

A. Well, as I remember this ditch cut by the Doddridge ditcher runs from say one to two and a half feet deep in that high place. When that work was done there was a conductor in charge of it and it was his intention to cut from the low place into the high place, and into some certain drain, and I believe with an expenditure of not more than \$250.00 or \$300.00 we could construct a ditch wide enough to take care of the water that would affect us, because we already have that 24 inch vitrified tile to take care of the water that would injure us.

247 Q. That would not take care of the water west of Lewisville?

A. No, sir; their road bed would keep a lot of this water off of us.

Q. Do you deem it worth while as division engineer upon the part of the Cotton Belt for the small amount of water that stands there to make this expenditure of \$250.00 to get that water off?

A. Not at all.

[Q.] How far is the barrow pit from the dump?

A. Well, that Doddridge ditcher cuts in the neighborhood of 15 feet from the center of the track on each side of the track. That would be about it, four or five feet.

Q. From the end of the ties?

A. That would be it, 11 feet from the end of the ties.

Q. How far from the bottom of the dump on a two foot fill would it throw the slope on a twenty foot embankment?

A. Well, our usual standard at the time this was built would throw the slope about thirteen feet.

Q. To the ditch?

A. Thirteen feet from the [toe] the slope on the dump.

Q. And that part of this distance down to the town through this depression is through a cut?

A. It is.

Q. How many openings have you in your track in that stretch of track?

A. Well, from the south leg of the Wye to Trestle 956 where Mr. Christian empties his water, there is a double 24 inch tile which would carry quite a bit of water, while west of Lewisville we have three additional tile openings.

Q. In your opinion as a railroad engineer is there sufficient drainage there for the purposes and uses of the Cotton Belt?

A. There has been ever since it has been operated. I don't see any reason to change it at all.

Cross-examination.

By Mr. Moore:

Q. I have never run levels and am not an engineer, but I was the first road overseer that laid that road out, and I ask you if your profile does not show a high place standing three or four stations or a hundred feet in length something more than two-thirds of the distance from the tank to that opening?

A. I don't quite understand.

48 Q. A location considerably higher than the other ground.

Now, how many feet is that high location?

A. Well, where we cut through we had to do some excavating for track is about 500 feet.

Q. Now, has any of the tiling that you put in through this high point filled in so that you do not get drainage under the track there at the present time?

A. There is a chance it has grown up in weeds, and possibly the section men have put ditches in it, but at the same time it has never caused us any trouble if he has done.

Q. Do you remember about what year that was plowed out?

A. No, sir; I don't; it must have been about the time I came with the road.

Q. It has been fully fifteen years. The road district has arranged to place iron pipes at various places to allow the drainage between the dump that will be thrown up in building the road and the railroad, so as to allow that water to get out into this ditch. It will necessitate an expense of approximately \$200.00 for the road district to buy and put in place these corrugated iron culverts. Would you say

that it will or will not benefit the railroad to the extent of the cost of these culverts to have that water removed?

A. Well, with the lack of complaints from soft track, or anything of that kind, I can't see why the railroad should go to that expense.

Q. The railroad will be the only party that could complain of these iron pipes to be put in there, and no one else than the railroad will get any benefit of it. Will you say that you are willing for the road district to eliminate these pipes and put them somewhere else rather than pay that expense?

A. Yes, sir. I don't see that we need them \$200.00 worth. If we had soft track, but under the circumstances and lack of anything of that kind, I cannot justify myself to spend that amount of money for the railroad company.

Q. Do you think it is worth anything for the railroad to have that drainage taken out?

A. I would not put it very much, Mr. Moore.

Mr. Turney: In other words you don't think it needed enough to cause you to put it in?

249 & 250 A. No, sir; had we had trouble with it we would a long time before this have taken care of our own drainage in a more efficient manner than we have.

Witness excused.

There was also introduced as evidence various depositions, maps, plats and exhibits, as follows:

(See Deposition of J. E. Searcy [marginal] p. 299 of this transcript.)

Director General of Railroads.

*Comparative Statement of Revenue, Traffic Statistics, and Capital Value Based on all Traffic to and from Stations
in Jefferson County, Arkansas, on St. Louis Southwestern Railroad.*

First Period—July 1, 1911, to June 30, 1914.

	Passenger.	Freight.	Total.
1. Railway Operating Revenue, Three Years.....	\$945,846.28	\$1,721,942.87	
2. Railway Operating Revenue, One Year.....	315,282.09	573,980.96	
3. Average Haul, in Miles, System.....	38.93	278.91	
4. Average Haul, in Miles, County.....	19.2	19.2	
5. Ratio of County Haul to Total Haul.....	49.6%	6.9%	
6. County Railway Operating Revenue.....	156,379.92	39,604.69	
7. Operating Ratio of Expenses to Revenue.....	93.1%	52.0%	
8. County Operating Expenses.....	145,589.71	20,594.44	
9. County Revenue less Operating Expenses.....	10,790.21	19,010.25	29,800.46
10. Ratio in value of Road to Road and Equipment.....			80.0%
11. County Revenue Applicable to Return on investment in Road.....			23,840.37

(EXHIBIT 2—Continued.)

Second Period—July 1, 1914, to June 30, 1917.

	Passenger.	Freight.	Total.
1. Railway Operating Revenue, Three Years.....	944,123.64	1,952,569.19	
2. Railway Operating Revenue, One Year.....	314,707.88	650,856.40	
3. Average Haul, in Miles, System.....	36.76	275.34	
4. Average Haul, in Miles, County.....	19.2	19.2	
5. Ratio of County Haul to Total Haul.....	52.2%	7.0%	
6. County Railway Operating Revenue.....	164,277.51	45,559.95	
7. Operating Ratio of Expenses to Revenue.....	93.1%	52.0%	
8. County Operating Expenses.....	152,942.36	23,691.17	
9. County Revenue Less Operating Expenses.....	11,335.15	21,868.78	33,203.93
10. Ratio in Value of Road to Road and Equipment.....			80.0%
11. County Revenue Applicable to Return on Investment in Road.....			26,563.14
Recapitulation.			
11. County Revenue—Second Period.....			26,563.14
11. County Revenue—First Period.....			23,840.37
12. Increase in County Revenue from all causes.....			2,722.77
13. Percentage of Increase due to all causes.....			11.4

(EXHIBIT 3.)

United States Railroad Administration.

Director General of Railroads.

Comparative Statement of Revenue, Traffic Statistics, and Capital Value Based on all Traffic to and from Stations in Jefferson County, Arkansas, on St. Louis, Iron Mountain & Southern Railroad.

First Period—July 1, 1911, to June 30, 1914.

	Passenger.	Freight.	Total.
1. Railway Operating Revenue, Three Years.....	\$812,621.92	\$2,381,382.58	
2. Railway Operating Revenue, One Year.....	270,873.97	797,127.53	
3. Average Haul, in Miles, System.....	37.68	233.22	
4. Average Haul, in Miles, County.....	20.5	20.5	
5. Ratio of County Haul to Total Haul.....	54.4%	8.8%	
6. County Railway Operating Revenue.....	147,355.44	70,147.22	
7. Operating Ratio of Expenses to Revenue.....	84.9%	62.4%	
8. County Operating Expenses.....	125,044.77	43,771.87	
9. County Revenue less Operating Expenses.....	22,250.67	26,375.35	48,262.02
10. Ratio in value of Road to Equipment and Road.....			86.4
11. County Revenue Applicable to Return on Investment in Road.....			42,012.88

(EXHIBIT 3—Continued.)

Second Period—July 1, 1914, to June 30, 1917.

	Passenger.	Freight.	Total.
1. Railway Operating Revenue, Three Years.....	785,387.28	2,584,523.95	
2. Railway Operating Revenue, One Year.....	261,795.76	861,507.98	
3. Average Haul, in Miles, System.....	39.42	230.15	
4. Average Haul, in Miles, County.....	20.5	20.5	
5. Ratio of County Haul to Total Haul.....	52.0%	8.9%	
6. County Railway Operating Revenue.....	136,133.80	76,674.21	
7. Operating Ratio of Expenses to Revenue.....	84.9%	62.4%	
8. County Operating Expenses.....	115,577.59	47,844.71	
9. County Revenue Less Operating Expenses.....	20,556.21	28,829.50	49,385.71
10. Ratio in Value of Road to Equipment and Road.....			86.4
11. County Revenue Applicable to Return on Investment in Road.....			42,669.29
Recapitulation.			
11. County Revenue—Second Period.....			42,669.29
11. County Revenue—First Period.....			42,012.88
12. Increase in County Revenue from all causes.....			656.41
13. Percentage of Increase due to all causes.....			1.6%

United States Railroad Administration.

Director General of Railroads.

Comparative Statement of Revenue, Traffic Statistics, and Capital Value Based on all Traffic to and from Stations in Lonoke County, Arkansas, on St. Louis Southwestern Railroad.

First Period—July 1, 1911, to June 30, 1914.

	Passenger.	Freight.	Total.
1. Railway Operating Revenue, Three Years.....	\$254,531.76	\$475,457.29	
2. Railway Operating Revenue, One Year.....	84,843.92	158,485.76	
3. Average Haul, in Miles, System.....	38.93	278.91	
4. Average Haul, in Miles, County.....	15.7	15.7	
5. Ratio of County Haul to Total Haul.....	40.3%	5.6%	
6. County Railway Operating Revenue.....	34,192.10	8,875.19	
7. Operating Ratio of Expenses to Revenue.....	93.1%	52.%	
8. County Operating Expenses.....	31,832.85	4,615.10	
9. County Revenue less Operating Expenses.....	2,359.25	4,260.09	6,619.34
10. Ratio in Value of Road to Road and Equipment.....			80.%
11. Revenue Applicable to Return on Investment in Road.....			5,295.47

(Exhibit 4—Continued.)

Second Period—July 1, 1914, to June 30, 1917.

	Passenger.	Freight.	Total.
1. Railway Operating Revenue, Three Years.....	258,344.36	548,336.77	
2. Railway Operating Revenue, One Year.....	86,114.79	182,776.42	
3. Average Haul, in Miles, System.....	36.76	275.34	
4. Average Haul, in Miles, County.....	15.7	15.7	
5. Ratio of County Haul to Total Haul.....	42.77	5.77	
6. County Railway Operating Revenue.....	36,771.02	10,418.40	
7. Operating Ratio of Expenses to Revenue.....	93.17	52.5	
8. County Operating Expenses.....	34,233.82	5,417.82	
9. County Revenue Less Operating Expenses.....	2,537.20	5,000.83	7,538.03
10. Ratio in Value of Road to Road and Equipment.....			80.77
11. Revenue Applicable to Return on Investment in Road.....			6,030.42
Recapitulation.			
11. County Revenue—Second Period.....			6,030.42
11. County Revenue—First Period.....			5,295.47
12. Increase in County Revenue from all causes.....			734.96
13. Percentage of Increase due to all causes.....			13.97

United States Railroad Administration.

Director General of Railroads.

Statement of Revenue, Traffic Statistics, and Capital Value Based on all Traffic to or from Stations on Road Improvement District No. 2, Lafayette County, Arkansas, on St. Louis Southwestern Railroad.

Period from July 1, 1914, to June 30, 1917.

	Passenger.	Freight.	Total.
1. Railway Operating Revenue, Three Years.....	\$206,286.50	\$205,924.32	
2. Railway Operating Revenue, One Year.....	68,762.16	68,641.44	
3. Average Haul, in Miles, System.....	36.58	275.54	
4. Average Haul, in Miles, District.....	8.5	8.5	
5. Ratio of District Haul to Total Haul.....	23.2%	3.1%	
6. District Railway Operating Revenue.....	16,090.35	2,117.56	
7. Operating Ratio of Expenses to Revenue.....	93.1%	52.0%	
8. District Railway Operating Expenses.....	14,980.11	1,101.13	
9. District Railway Operating Revenue less Expenses.....	1,110.23	1,016.43	2,126.66
10. Ratio in Value of Road to Road and Equipment.....			80.0%
11. District Revenue applicable to return on investment in road.....			1,701.33
12. Increase in District Revenue applicable to return on investment in Road (13.9%).....			236.48
13. Annual Tax Proposed by District.....			1,988.24

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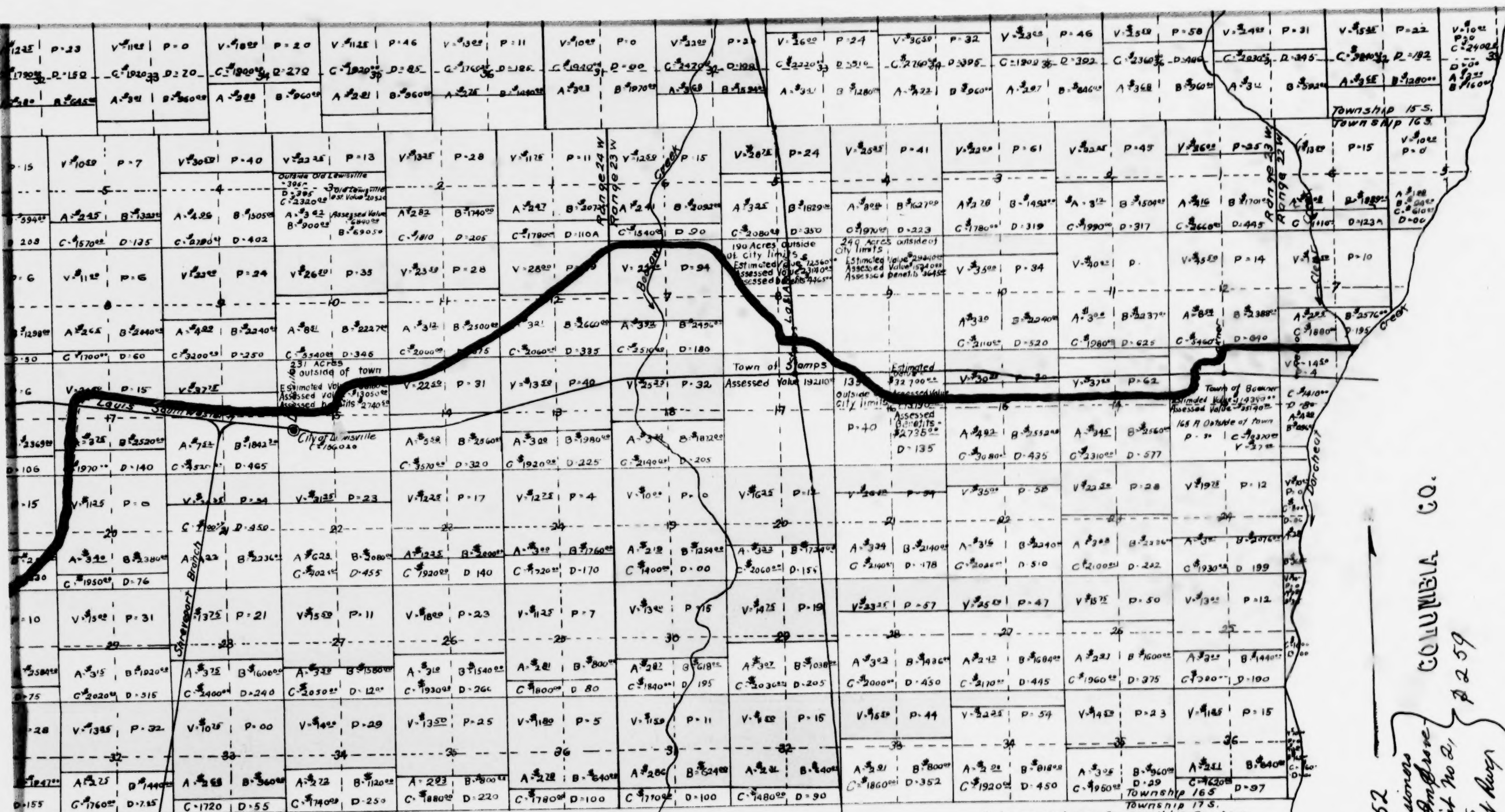
(EXHIBIT 6.)

(Blue Print or Map of Road Improvement District No. 2, Showing the Location of the Cotton Belt Railroad to the Proposed Highway in the Road District, etc.)

(Here follows map marked page 259a.)

TOTAL ASSESSED BENEFITS - \$320,825.25
TOTAL ASSESSMENT, STATE & COUNTY PURPOSES - \$689,771.28
TAXES EXCLUSIVE ROADS
TOTAL ESTIMATED VALUE IN DISTRICT - \$3,000,000, EXCLUSIVE RAILROAD
TOTAL ASSESSED BENEFITS TO RAILROAD - \$49,706.00

Proposed Road.
Shows Proportion (not location) of Section Lyin
Shows Proportion (not location) of Section.
Cleared in Pasture, Cultivated, Etc
29769 Acres - Total Amount of Land Cultivat
C - Assessments per parcel for State & County Mu

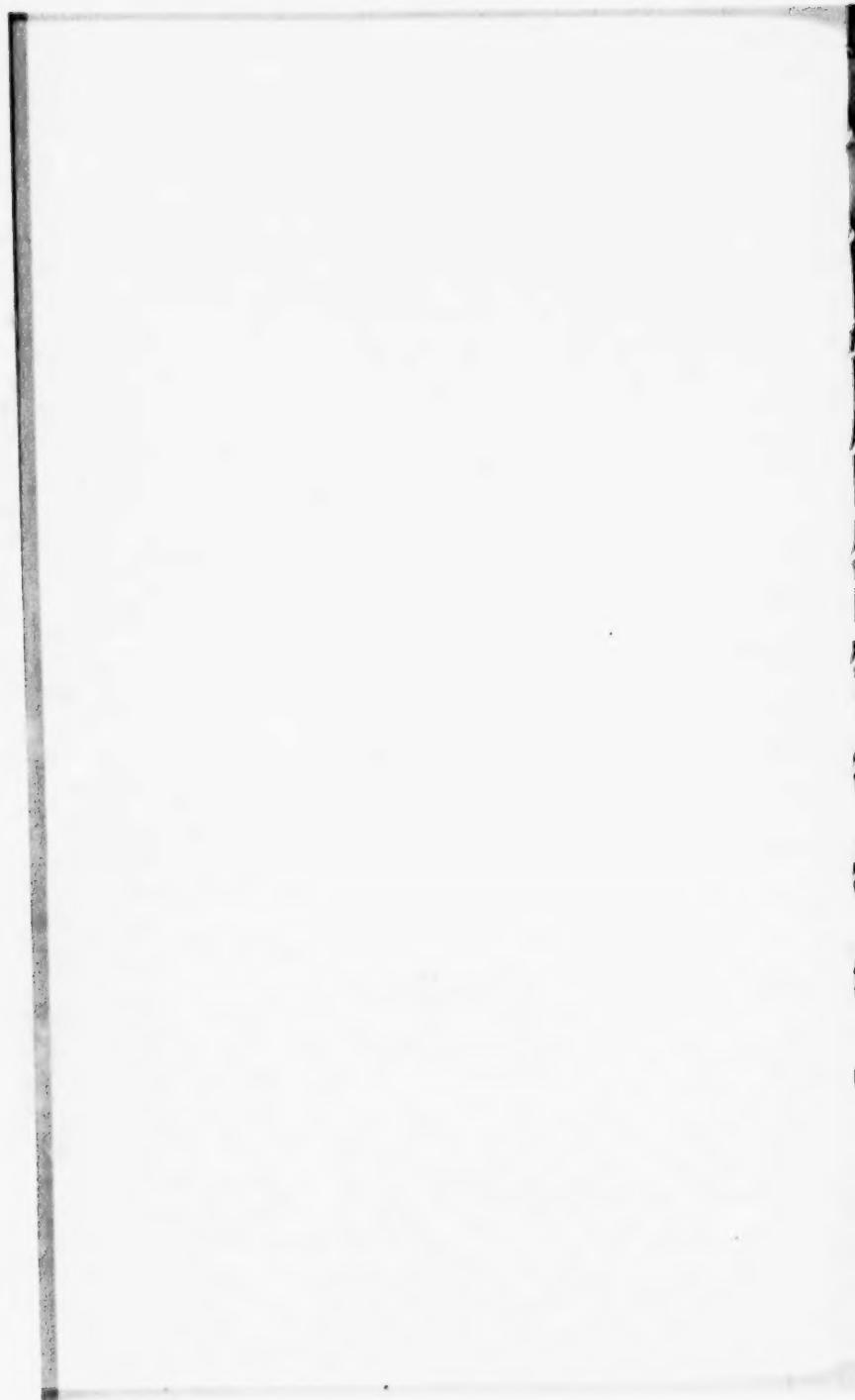


LAFAYETTE COUNTY, ARK.
ROAD IMPROVEMENT DISTRICT NO. 2.
SCALE 2 INCHES = 1 MILE

Proposed Road.
Shows Proportion (not location) of Section Lying Wild
Shows Proportion (not location) of Section.
Cleared in Pasture, Cultivated, Etc
29769 Acres - Total Amount of Land Cultivated, Etc.
C-Assessments per parcel for State & County Purposes

V-Average Estimated Present Value Per Acre
P-Population Exclusive of Towns
A-Assessed Value Per Acre for State and County Purposes
B-Assessed Benefits
41407 Acres - Total Amount of Land Lying Wild
D-Acres in Cultivation.

No 552
Commissioners
of Road Improvement
District No 2,
St. S. N. Hwy
COLUMBIA CO.
p 2 59



Naked Land Value of Right-of Way of St. Louis Southwestern Railroad.

By Interstate Commerce, Bureau of Valuation.

June 30th, 1915.

Main Line:

Mile.	Area.			
380-381	19.25	Acres @	\$5.00	.....
Buckner	4.78	Acres @	15.00	\$71.70
	19,890	Sq. Ft. @	.001	19.89
	151,695	Sq. Ft. @	.002	303.39
	131,805	" "	.0033	434.96
	99,000	" "	.02	1,980.00
	99,000	" "	.033	3,267.00
	3.30	Acres	12.00	39.60
				6,116.54
Total Zone 24				6,212.79

382	1.58	Acres @	\$12.00	18.96
383	13.40	"	12.00	160.80
384	12.20	"	7.00	85.40
385 Part	1.48	"	3.00	4.44
Stamps	411,170	Sq. Ft. @	.001	411.17
	268,000	" "	.002	536.00
				269.60

Zone 27.

Mile.	Area	Acres @		
391	7.83	..	\$15.00	\$117.45
392-393	23.63	..	5.00	118.15
394	12.24	..	10.00	122.40
395	13.15	..	30.00 (Red River Bottom)	394.50
396-397	23.95	..	20.00	479.00
Part 398	1.95	..	20.00	39.00
				<hr/> 1,270.95
Total Zone 27.....				1,270.95
Total, main line.....				24,317.81

Shreveport Branch:

Mile.	Sq. ft. @	Acres @		
Lewisville	130,600	..	.0025	326.50
391	2.48	..	15.00	37.20
391	6.47	..	20.00	129.40
392-393	24.21	..	8.00	193.68
Part 394	10.05	..	6.00	60.30
				<hr/> 420.58
Total Shreveport Branch.....				747.08
Total, Road Imp. Dist. No. 2.....				\$25,064.89

EXHIBIT 7—Continued.

Area.		Recapitulation.	
Zone 24	19.25 Acres average.	\$5.00	\$96.25
Zone 25	" "	9.41	269.60
Zone 26	" "	6.62	302.20
Zone 27	" "	15.36	1,270.95
Branch	" "	9.73	420.58
<hr/>		<hr/>	<hr/>
221.37		10.66	2,359.58
Buckner .....		.....	6,116.54
Stamps .....		.....	5,014.27
Lewisville, Main Line.....		11,248.00	
Branch		326.50	
<hr/>		<hr/>	<hr/>
			22,705.31
			<hr/>
			\$25,064.89

The above was all the testimony introduced or given in this cause by either and by both parties thereto.

262 There not being time to complete the trial of this cause on the 16th day of May the same was adjourned over to the 17th day of May, and same not being completed it was again adjourned over to the 19th day of May, 1919.

And upon the 19th day of May the court, having heard the evidence and the argument of counsel, withdrew this case from the jury on the ground that there was no disputed question of fact to submit to the jury.

(Finding the Fact and Declarations of Law Requested by Road Improvement District No. 2 and Exception to the Ruling of the Court Thereon.)

The Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas requested the court to make the following findings of fact and declarations of law, to-wit:

I.

The court finds that in arriving at the amount of benefits received by the lands in the country, the lands in the city, and the railroad track, the assessors in their discretion might legally use the acreage zoning system in assessing the benefits received by the land in the country, and might use a certain per centum of the assessed valuation for State and County purposes in arriving at the benefits received by the real estate in the towns, and might estimate the amount per mile of the benefits received by the railroad track from the building of the road. Each of such several benefits may be such sums as are found to be just, right and equitable considering the kind, character and use of said three several species of property.

II.

That in determination the amount of benefits that will be received from the building of the road by the Railway Company, there shall be taken into consideration the fact, if it be a fact, that freight will be brought in to the railroad and be shipped during the wet season of the year when traffic is light, thus furnishing tonnage to the railroad at a time when it can be carried more cheaply than during the rush season when the railroads cannot furnish cars, labor or equipment to handle the tonnage.

The fact, if it is a fact, that intensive farming will be encouraged by the improvement, and additional crops raised on the lands at present cleared, and crops raised of a character that will furnish
263 a greater tonnage than at present, and tonnage that will carry a higher rate of freight than the tonnage now received by the railroad company.

The benefit to be received by the railroad company from the drain-

age of its right of way, if the evidence shows that any benefit will be had, from the better drainage furnished by the building of the road.

In addition there shall be taken into consideration the probable increase in traffic due to the settling up of the country, and the estimated growth in population that may be found will take place as the result of the improvement being made.

III.

That the amount of benefits that will accrue to lands within the district or the track of the defendant railway company is to a large extent incapable of exact estimation. In arriving at such benefit account must be taken of the estimated growth of population because of the building of the road, and the increase over the railroad that may be anticipated therefrom.

An estimate of benefits resulting from a local improvement to a given piece of property is largely a matter of opinion, and generally there is a wide difference of opinion on such questions. Great deference is due to the judgment of the Board of Assessors who were constituted as a special tribunal for the purpose of determining the question of benefits to the land and railroad tracks within the confines of the Road Improvement Districts, and in reviewing the proceedings of said assessors the court must not substitute its judgment for that of the assessors unless the evidence clearly shows that the assessments made are erroneous.

The court refused to make said findings of fact and declarations of law, and the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas excepted severally to the refusal of the court to make and give each of said findings of fact and declarations of law as above copied, numbered one, two and three respectively, and said exceptions were noted of record.

(Findings of Fact and Declarations of Law Requested by St. Louis Southwestern Railway Company and Exception to the Ruling of the Court Thereon.)

Thereupon the plaintiff in error, the St. Louis Southwestern Railway Company, moved the court to make declarations of law and findings of fact in words and figures as follows, to-wit:

1. The court finds from the evidence that the only benefits which will accrue to the property of the railway company located within the district by reason of the construction of the road will be the enhancement in value of the naked land, exclusive of all improvements, and that such enhancement in value will not be more than the enhancement in value of the naked land of adjoining or contiguous property similarly located with reference to the road and of the same general nature, character and value.

2. The court further finds that the value of the steel rails, fastenings, ties, road bed dump of the railway company will not be en-

hanced by the construction of the road, and that such steel rails, fastenings, ties, road bed dump, will receive no benefit from the construction of the road.

3. The court further finds that the value of the naked land occupied by the railroad right of way within the corporate limits of the towns of Buckner, Stamps and Lewisville, is \$22,705.31.

Declarations of Law.

1. The assessment of benefits against the railroad property lying within the corporate limits of the towns of Buckner, Stamps and Lewisville, should be at the rate of 15% of 40% of the actual physical value of the naked land of the railway company so situated.

The court refused to make any one of said findings of fact and refused to give said declarations of law and the plaintiff in error, the St. Louis Southwestern Railway Company, thereupon excepted severally to the refusal of the court to make and give each of said findings of fact and declarations of law as above copied, said declarations of fact being numbered one, two and three, and said declarations of law being numbered one.

(Declarations of Law by the Court and Exceptions Thereto.)

Thereupon the court declared the law to be as follows, to-wit:

I.

That the assessment of benefits against the property of the defendant Railway Company situated outside of the corporate limits of the towns of Buckner, Stamps and Lewisville, should be the same as the assessment of benefits against the other property situated outside of said cities and towns and lying within the same zone with reference to the location of the improved road per unit of area.

II.

The court further finds that the assessment of benefits against the property of the defendant Railway Company lying within the towns of Lewisville, Stamps and Buckner should be at the same percentage of the actual value of such property including the land, steel rails, fastenings, buildings and structures, roadbed dump and ties; that the assessment of benefits against other property lying within such cities and towns bears to the actual value of such property, and the court finds that when assessments against the property of the defendant company lying within such cities and towns are made upon this basis, such assessment of benefits aggregated the sum of \$9,600.00, or \$2,400.00 per mile of railroad.

To the action of the court, in making the above two declarations of law, the Commissioners of Road Improvement District No. 2 at the

time excepted severally to each of said two declarations of law made by the court, and said exceptions were noted of record.

Also to the action of the court, in making the above declarations of law numbered two, the plaintiff in error, the St. Louis Southwestern Railway Company, excepted and had its exceptions noted of record.

(Assignment of Errors by Road Improvement District No. 2.)

The Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas filed the following assignment of errors as follows, to-wit:

1. Because this court is without jurisdiction to hear this cause, and because the District Court erred in not remanding this cause to the County Court of Lafayette County, Arkansas as this proceeding is not a "suit" within the meaning of the removal statute, over the objection and exception of Commissioners of Road Improvement District No. 2 made at the time that said motion to remand was overruled.

2. Because said District Court erred in not sustaining the demurrer filed by plaintiff in error to the exceptions as amended by the defendant in error.

266 3. Because the order and judgment of the court is contrary to the law.

4. Because the order and judgment of the court is contrary to the evidence.

5. Because the order and judgment of the court is contrary to both the law and the evidence.

6. Because the said District Court erred in not allowing, recognizing and taking into consideration the three natural classifications of land as [benefitted] by the building of the said gravel road, to-wit: 1st, country or agricultural lands; 2nd, urban lands, and 3rd, railroad track with the appurtenances thereof.

7. The said U. S. District Court erred in not assessing the benefits against each of said three classes of property on a separate and distinct basis, taking into consideration the various uses to which said three classes of property are put.

8. The court erred in reducing the aggregate sum of the benefits as returned by the Board of Assessors against the property, lands and railroad track of the defendant in error from the sum of \$49,706.00 to the sum of \$10,485.48.

9. The court erred in apportioning equally the costs between the plaintiff in error and the defendant in error.

(Assignment of Errors by St. Louis Southwestern Railway Company.)

The plaintiff in error, St. Louis Southwestern Railway Company, filed in this cause the following assignments of error, to-wit:

1. The District Court was in error in overruling the motion of plaintiff in error, St. Louis Southwestern Railway Company, and over the objection and exception of the said Railway Company, to make the following finding of fact numbered one in words and figures as follows:

The court finds from the evidence that the only benefit which will accrue to the property of the Railway Company within the district by reason of the construction of the road will be the enhancement of the naked land, exclusive of all improvements, and that such enhancement in value will not be more than the enhancement
267 in value of the naked land adjoining or contiguous property similarly located with reference to the road and of the same general nature, character and value.

2. The District Court was in error in overruling over the objection and exception of the said Railway Company the motion of said plaintiff in error to make the following finding of fact numbered two:

The court further finds that the value of steel rails, fastenings ties and road bed dump of the Railway Company will not be enhanced by the construction of the road, and that such steel rails, fastenings, ties and road bed dump will receive no benefit from the construction of the road.

3. The District Court was in error in overruling over the objection and exception of the Railway Company, Plaintiff in Error, the motion of said plaintiff in error that the following finding of fact be made, same being numbered three:

The court further finds that the value of the named lands occupied by the railroad right of way within the corporate limits of the towns of Buckner, Stamps and Lewisville is \$22,705.31.

4. The District Court was in error in overruling over the objection and exception of the plaintiff in error, said Railway Company, the motion of said Railway Company that the court make the following declarations of law, to-wit:

The assessment of benefits against the railroad property lying within the corporate limits of the towns of Buckner, Stamps and Lewisville should be at the rate of fifteen per cent of forty per cent of the actual physical value of the naked land of the Railway Company so situated.

5. The District Court erred in making the following finding of fact and declaration of law over the objection and exception of the

plaintiff in error, Railway Company, the same being numbered two and is as follows:

The court further finds that the assessment of benefits against the property of the defendant Railway Company lying within the towns of Lewisville, Stamps and Buckner should be at the same per centage of the actual value of such property, including the land, steel rails, fastenings, buildings, structures, road bed dump and ties that the assessment of benefits against other property lying within such cities and towns bears to the actual value of such property, and the court finds that when the assessments against the property of the defendant company lying within such cities and towns are made upon this basis, such assessment of benefits aggregate the sum of \$9,600.00, or \$2,400.00 per mile of railroad.

To this declaration plaintiff in error, Railroad, objected for the reason that the assessment made by said finding of fact and declaration of law is predicated upon and includes the value of the buildings, steel rails, fastenings, ties and railroad bed dump of the Railroad Company which the evidence in the case shows will receive no benefit from the construction of the proposed road, thereby depriving appellant of its property without due process of law in contravention of the first section of the fourteenth amendment to the Constitution of the United States.

6. The District Court further erred in making the said declaration of law over the objection and exception of plaintiff in error for the reason that the assessment made in accordance with said declaration of law is predicated upon and includes the value of the buildings, steel rails, fastenings, ties and road bed dump of the said Railway Company in the cities and towns, whereas in the assessment upon all property in the district lying without the cities and towns constituting 67/70 of the entire area of the district, no benefits were considered against improvements located on said lands, nor was any consideration given to the value thereof, thereby causing a grossly and unequal proportion of the cost of such improvement to be borne by the property of the plaintiff in error, Railway Company, thereby depriving it of the equal protection of the law in contravention of the first section of the fourteenth amendment to the Constitution of the United States.

7. The District Court erred in making said declaration of law and fact over the objection and exception of the appellant Railway Company for the reason that the assessment made thereunder is predicated upon and includes the value of the steel rails, fastenings and ties which are personal property and not subject to such assessment.

8. The District Court erred in giving said declaration of law over the objection and exception of plaintiff in error, Railway Company for the reason that the assessment made under said declaration of law included the value of the steel rails, fastenings, and ties of the said Railway Company, which said rails, fastenings and ties are personal property and no assessment of benefits were made against any other personal property within the district so that a grossly dispro-

portionate part of the cost of the improvement is placed upon the property of the plaintiff in error, Railway Company, thereby depriving it of the equal protection of the law in contravention of the first clause of the fourteenth amendment to the Constitution of the United States.

9. The District Court erred in making said declaration of law for the reason that there was no evidence of any substantial character to sustain the same.

10. That the assessment of benefits placed upon the property of the plaintiff in error in the three towns, Lewisville, Buckner and Stamps, and the judgment of the court so fixing said assessment therein is grossly excessive, arbitrary, unreasonable and substantially exceeds the benefits which are shown by the evidence will or may accrue to such property.

11. The assessment fixed by the judgment of the court upon the property of the appellant is arbitrary, excessive and constitutes an unlawful burden upon Interstate Commerce in violation of that part of Section 8, Article 1, of the Constitution of the United States vesting in Congress the power to regulate commerce among the several states.

(Certificate of Judge to Bill of Exceptions.)

And now comes the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, plaintiff in error, and comes also the plaintiff in error, St. Louis Southwestern Railway Company, with this their bill of exceptions, containing all the evidence, the declaration of law and fact requested by each plaintiff in error, and the declaration of law and fact as given by the court and all their several respective exceptions thereto save during the trial, and tender their said bill of exceptions jointly to the court or the Judge thereof in vacation, praying that same may be examined, approved, signed and ordered filed and made a part of the record in this cause, which is hereby done.

FRANK A. YOUNG,

Judge.

(Certificate of Question of Jurisdiction Asked by Improvement District and Denial Thereof.)

(Filed in the U. S. District Court, June 25, 1919.)

The District Court of the United States for the Western District of Arkansas, Texarkana Division, hereby certifies to the Circuit Court of Appeals for the Eighth Circuit that at the May term, 1919, of said District Court, a judgment was entered in the above entitled action pursuant to the decision of said Court declining to sustain a motion filed on behalf of the plaintiff in error asking that said cause be remanded to the County Court of Lafayette County, Arkansas—the substance of said motion to remand being

that said District is without jurisdiction to try said cause, because not a "suit" within the meaning of removal statutes as no appeal is contemplated or allowed by law in a proceeding of this kind from the County Court of Lafayette County, acting as a Board of Assessors, to the said United States District Court.

A copy of the motion to remand is contained in the judgment roll filed herein to which reference is had for more particular description hereof.

And this Court further certifies that in said cause the jurisdiction of said Court is in issue, the question being raised whether under Act 338 of Acts passed by the General Assembly of the State of Arkansas for the year 1915, the general road law of Arkansas, the so-called Alexander Act, an appeal may be taken from the decision and return of the Board of Assessors as made to the County Court of Lafayette County, Arkansas, to the District Court of the United States for the purpose of having said District Court rather than the County Court determine whether such assessment of benefits is right, just and equitable.

This Court further certifies to the Circuit Court of Appeals for the Eighth Circuit that such question of jurisdiction was raised by said motion to remand as set out aforesaid, and this Court declined to remand said cause and held that it had jurisdiction over same.

Dated Fort Smith, Arkansas, — — —, 1919.

United States District Judge.

The foregoing is presented to the trial Judge and he declines to sign the same this 25th day of June, 1919.

FRANK A. YOUMANS,
Judge.

271 *Petition for Writ of Error by Improvement District.*

Filed in U. S. District Court June 25, 1919.

To the Honorable Frank A. Youmans, Judge of the United States District Court for the Western District of Arkansas:

The petition of the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, who are residents of Lafayette County and State of Arkansas, respectfully shows that heretofore said Commissioners, who are the plaintiffs in error, filed their assessment of benefits against all the lands, town lots and railroad track situate within the confines of the Improvement District organized for building a hard surface gravel road East and West through Lafayette County, Arkansas, and that the defendants in error, the St. Louis Southwestern Railway Company, removed said cause to the United States District Court for the Western District of Arkansas, Texarkana Division. That said Court failed and refused to remand said cause to the County Court of Lafayette County, Arkansas, as requested by the plaintiff in error. That on the trial of said cause at the May Term of said United States District Court, a decision and order and

judgment was entered reducing the amount of the assessment of benefits against the defendant in error from \$49,706.00 to \$10,485.48. That to said order and judgment and to the refusal of the United States District Court to remand said cause to the County Court of Lafayette County, Arkansas, and to the various findings of fact and of law as made by said United States District Court, exceptions were at the time saved by the plaintiff in error. That said plaintiff in error, considering himself aggrieved by the order entered at said May term, 1919, in the above entitled proceedings, doth hereby pray that a Writ of Error issue from and that an appeal may be allowed from said United States District Court to the Circuit Court of Appeals for the Eighth Circuit, and that a transcript of the record and proceedings and papers upon which said judgment and order was made, duly authenticated, may be sent to said Circuit Court of Appeals for the Eighth Circuit. There is hereto attached an Assignment of Errors setting forth the orders and decisions appealed from, and your petitioner prays that it be allowed to bring up for review before the said Circuit Court of Appeals for the Eighth Circuit the said order and judgment of said United States District Court for the Western District of Arkansas, Texarkana Division, and that your petitioner may have such other and further relief in the premises as may be just. And your petitioner will ever pray, etc.

HENRY MOORE, Jr.,

Petitioner's Attorney, State Bank Bldg., Texarkana, Ark.

I, Henry Moore, Jr., do state on oath that I am the attorney for the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, and I believe the facts set forth in the above petition are true.

HENRY MOORE, Jr.,

Subscribed and sworn to before me this 25th day of June, 1919,

GUY H. LAMBETH,

Notary Public.

My Com. expires July 26, 1919.

Assignment of Errors by Improvement District.

Filed in U. S. District Court June 25, 1919.

Now comes the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, the plaintiff in the District Court and the plaintiff in error here, and considering itself aggrieved by the final judgment and order of the District Court, the said plaintiff in error prays an appeal from such order and judgment in the above entitled cause to the Circuit Court of Appeals for the Eighth Circuit, and makes and files this its Assignment of Errors in said cause.

1.

The United States District Court for the Western District of Arkansas, Texarkana Division, was without jurisdiction to hear this case and the motion on behalf of the plaintiff in error to remand this cause to the County Court of Lafayette County, Arkansas, should have been granted. Said District Court erred in refusing to remand this cause to the County Court of Lafayette County, Arkansas, for the reason that no removal of such cause or proceeding is contemplated or allowed in law and said District Court had no jurisdiction in this case as same is not a "suit" within the meaning of the removal statutes.

2.

Said District Court erred in not sustaining the demurrer filed by plaintiff in error to the Exceptions as amended of the defendant in error for the reason the said amended exceptions do not set forth any just, reasonable or legal grounds for changing the assessment of benefits as made by the Board of Appraisers against the lands and railroad track of the said defendant in error.

3.

The said District Court erred in that having heard the evidence of witnesses, the stipulations of the parties hereto and the argument of counsel, the Court on its own motion withdrew this cause from the consideration of the jury. The plaintiff in error should have been allowed to go to the jury on the question of the amount of benefits received by the lands and railroad track of the defendant in error.

4.

The said District Court erred in refusing to make following Findings of Fact and Declarations of Law as requested by the Plaintiff in error, to wit:

1. The Court finds that in arriving at the amount of benefits received by the lands in the country, the lands in the city and the railroad track, the assessors in their discretion might legally use the acreage zoning system in assessing the benefits received by the land in the country, and might use a certain per centum of the assessed valuation for State and County purposes in arriving at the benefits received by the real estate in the towns, and might estimate the amount per mile of the benefits received by the railroad track from the building of the road. Each of such several benefits may be such sums as are found to be just, right and equitable considering the kind, character and use of said three several species of property.

2. That in determining the amount of benefits that will be received from the building of the road by the Railway Company, there

shall be taken into consideration the fact, if it be a fact, that freight will be brought in to the railroad and be shipped during the wet season of the year when traffic is light, thus furnishing tonnage to the railroad at a time when it can be carried more cheaply than during the rush season when the railroads can not furnish cars, labor or equipment to handle the tonnage.

The fact, if it is a fact, that intensive farming will be encouraged by the improvement, and additional crops raised on the lands at present cleared, and crops raised of a character that will furnish a greater tonnage than at present, and tonnage that will carry
274 a higher rate of freight than the tonnage now received by the railroad company.

The benefit to be received by the railroad company from the drainage of its right of way, if the evidence shows that any benefit will be had, from the better drainage furnished by the building of the road.

In addition there shall be taken into consideration the [probably] increase in traffic due to the settling up of the country, and the estimated growth in population that may be found will take place as the result of the improvement being made.

3. That the amount of benefits that will accrue to lands within the district or the track of the defendant railway company is to a large extent incapable of exact estimation. In arriving at such benefits account must be taken of the estimated growth of population because of the building of the road, and the increase in traffic over the railroad that may be anticipated therefrom.

An estimate of benefits resulting from a local improvement to a given piece of property is largely a matter of opinion, and generally there is a wide difference of opinion on such questions. Great deference is due to the judgment of the Board of Assessors who were constituted as a special tribunal for the purpose of determining the question of benefits to the land and railroad tracks within the confines of the Road Improvement District, and in reviewing the proceedings of said assessors the court must not substitute its judgment for that of the assessors unless the evidence clearly shows that the assessments made are erroneous.

5.

The said District Court erred in declaring the law to be as follows, to wit:

"That the assessment of benefits against the property of the defendant Railway Company situated outside of the corporate limits of the towns of Buckner, Stamps and Lewisville should be the same as the assessment of benefits against the other property situated outside of said cities and towns lying within the same zone with reference to the location of the improved road per unit of area."

The said error in the declaration of the law by the Court resulted in the track of the defendant in error, outside of the incorporated

275 towns being assessed at \$54.00 per mile, when said track should have been assessed a benefit of \$2,000.00 per mile, as found by the Board of Appraisers.

6.

The said District Court erred in not allowing, recognizing and taking into consideration the three natural classifications of lands as [benefitted] by the building of the road, to-wit: 1st, country or agricultural lands; 2nd, urban lands, and 3rd, railroad track with the appurtenances thereto. The said Court erred in not assessing the benefits against each of the said three classes of property on a separate and distinct basis, taking into consideration the various uses to which said three classes of property are put. Because of said error, and because the character, kind and use to which railroad property is put was not considered, the Court assessed a benefit of only \$54.00 per mile against the track outside of the incorporated towns, and assessed a benefit of \$2,400.00 per mile against the same track situate in such incorporated towns. The assessors placed a benefit of \$2,000.00 per mile against all of said railroad track whether within or without incorporated towns, taking the track as a unit.

7.

The Court erred in reducing the aggregate sum of the benefits as returned by the Board of Assessors against the property, lands and railroad track of the defendant in error from the sum of \$49,706.00 to the sum of \$10,485.48, and erred in apportioning equally the costs between the plaintiff in error and the defendant in error.

Because of the several errors as above set forth, and because of each and every separate error herein set forth, plaintiff in error prays that this cause be reversed and remanded.

Respectfully submitted,

HENRY MOORE, JR.,

Attorney for Plaintiff in Error,

State National Bank Building, Texarkana, Arkansas.

Prayer for Reversal by Improvement District.

Filed in U. S. District Court June 25, 1919.

Now comes the Commissioners of Road Improvement District No. of Lafayette County, Arkansas, the plaintiff in Error, and pray for a reversal of the judgment of the United States District
276 Court for the Western District of Arkansas, Texarkana Division, in the action transferred to said Court from the County Court of Lafayette County, Arkansas, in the matter of Road Improvement District No. 2 of Lafayette County, Arkansas, Assessment of Benefits against the St. Louis Southwestern Railway Com-

pany, which order and judgment were entered in said Court at the May term thereof on or about the 19th day of March, 1919.

HENRY MOORE, JR.,

*Attorney for Commissioners of Road Improvement
District No. 2 of Lafayette County, Arkansas.*

(Petition for Writ of Error by St. Louis Southwestern Railway Company.)

(Filed in the U. S. District Court June 25, 1919.)

To the Honorable Frank A. Youmans, Judge of the United States District Court for the Western District of Arkansas:

Now comes the Plaintiff in Error, St. Louis Southwestern Railway Company, and presents this its petition for writ of error and says that there are errors in the record, proceedings and judgment in the above entitled cause, and for the purpose of having the same reversed and corrected in the United States Circuit Court of Appeals for the Eighth Circuit of the United States, presents herewith its assignment of error setting forth among other things the orders and decisions appealed from, and your petitioner prays that it may be allowed to bring up for review to the said Circuit Court of Appeals for the Eighth Circuit the said orders and judgment of the United States District Court for the Western District of Arkansas, Texarkana Division, for review and correction, and that your petitioner may have such other and further relief as may be just and proper, and your petitioner will ever pray, etc.

ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY.

By T. J. GAUGHAN,
Petitioner's Attorney.

I, T. J. Gaughan, do state on oath that I am the attorney for the St. Louis Southwestern Railway Company, and reside at Camden, Arkansas, and believe that the statements made in the foregoing petition are true.

T. J. GAUGHAN.

Subscribed and sworn to before me this 25th day of June, 1919.

WM. S. WELLSHEAR,
Clerk.

(Assignment of Errors by St. Louis Southwestern Railway Company.)

(Filed in the U. S. District Court June 25, 1919.)

Now comes the Plaintiff in Error, St. Louis Southwestern Railway Company, and files herewith its petition for writ of error and says that there are errors in the record and proceedings in the above

entitled cause, and for the purpose of having the same reviewed and reversed in the United States Circuit Court of Appeals for the Eighth Circuit, make the following assignments of error:

1. The District Court was in error in overruling the motion of Plaintiff in Error, St. Louis Southwestern Railway Company, and over the objection and exception of said Railway Company, to make the following finding of fact numbered one in words and figures as follows:

The court finds from the evidence that the only benefit which will accrue to the property of the Railroad Company within the district by reason of the construction of the road will be the enhancement of the naked land, exclusive of all improvements, and that such enhancements in value will not be more than the enhancement in value of the naked land adjoining or contiguous property similarly located with reference to the road and of the same general nature, character and value.

2. The District Court was in error in overruling over the objection and exception of the said Railway Company the motion of said plaintiff in error to make the following finding of fact numbered two:

The Court further finds that the value of steel rails, fastenings, ties and road bed dump of the Railway Company will not be enhanced by the construction of the road, and that such steel rails, fastenings, ties and road bed dump will receive no benefit from the construction of the road.

3. The District Court was in Error in overruling over the objection and exception of the Railway Company, Plaintiff in Error, the motion of said Plaintiff in Error that the following finding in fact be made, same being numbered three:

The court further finds that the value of the naked land occupied by the railroad right of way within the corporate limits of the towns of Buckner, Stamps and Lewisville is \$22,705.31.

4. The District Court was in error in overruling over the objection and exception of the Plaintiff in Error, said Railway Company the motion of said Railway Company that the Court make the following declaration of law, to-wit:

The assessment of benefits against the Railroad property lying within the corporate limits of the towns of Buckner, Stamps and Lewisville should be at the rate of fifteen per cent of forty per cent of the actual physical value of the naked land of the Railway Company so situated.

5. The District Court erred in making the following finding of fact and declaration of law over the objection and exception of the Plaintiff in Error, Railway Company, the same being numbered two and is as follows:

The Court further finds that the assessment of benefits against the property of the defendant Railway Company lying within the

towns of Lewisville, Stamps and Buckner should be at the same percentage of the actual value of such property, including the land, steel rails, fastenings, buildings, structures, road bed dump and ties that the assessment of benefit against other property lying within such cities and towns bears to the actual value of such property, and the court finds that when the assessments against the property of the defendant company lying within such cities and towns are made upon this basis, such assessment of benefits aggregate the sum of \$9,600.00, or \$2,400.00 per mile of railroad.

To this declaration Plaintiff in Error Railroad objected for the reason that the assessment made by said finding of fact and declaration of law is predicated upon and includes the value of the buildings, steel rails, fastenings, ties and railroad bed dump of the Railroad Company which the evidence in the case shows will receive no benefit from the construction of the proposed road, thereby depriving appellant of its property without due process of law in contravention of the first section of the fourteenth amendment to the Constitution of the United States.

270 6. The District Court further erred in making the said declaration of law over the objection and exception of Plaintiff in Error for the reason that the assessment made in accordance with said declaration of law is predicated upon and includes the value of the buildings, steel rails, fastenings, ties and road bed dump of the said Railway Company in the cities and towns, whereas in the assessment upon all property in the district lying without the cities and towns constituting 67/70 of the entire area of the district, no benefits were considered against improvements located on said lands, nor was any consideration given to the value thereof, thereby causing a grossly and unequal proportion of the cost of such improvement to be borne by the property of the plaintiff in error, Railway Company, thereby depriving it of the equal protection of the law in contravention of the first section of the fourteenth amendment to the Constitution of the United States.

7. The District Court erred in making said declaration of law and fact over the objection and exception of the appellant Railway Company for the reason that the assessment made thereunder is predicated upon and includes the value of the steel rails, fastenings and ties which are personal property and not subject to such assessment.

8. The District Court erred in giving said declaration of law over the objection and exception of plaintiff in error, Railway Company, for the reason that the assessment made under said declaration of law included the value of the steel rails, fastenings and ties of the said Railway Company, which said rails, fastenings and ties are personal property and no assessment of benefits were made against any other personal property within the district so that a grossly disproportionate part of the cost of the improvement is placed upon the property of the Plaintiff in Error, Railway Company, thereby depriving it of the equal protection of the law in contravention of the first clause of the fourteenth amendment to the Constitution of the United States.

9. The District Court erred in making said declaration of law for the reason that there was no evidence of any substantial character to sustain the same.

10. That the assessment of benefits placed upon the property of the Plaintiff in Error in the three towns, Lewisville, Buckner and Stamps and the judgment of the Court so fixing said assessment therein is grossly excessive, arbitrary, unreasonable and substantially exceeds the benefits which are shown by the evidence will or may accrue to such property.

280 11. The assessment fixed by the judgment of the Court upon the property of the appellant is arbitrary, excessive and constitutes an unlawful burden upon Interstate Commerce in violation of that part of Section 8, Article 1, of the Constitution of the United States vesting in Congress the power to regulate commerce among the several states.

Because of the several errors as above set forth, and because of each and every error herein set forth, plaintiff in error prays that this cause be reversed and remanded.

ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY,
By GAUGHAN & SIFFORD,
Att'ys.

(Bond on Writ of Error of the Improvement District.)

(Filed in the U. S. District Court June 25, 1919.)

Know all men by these presents: That the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas; and Henry Moore, Jr., and ———, all of the County of Lafayette and State of Arkansas, are held and firmly bound unto the above named St. Louis Southwestern Railway Company in the sum of Five Hundred Dollars, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and dated the 25th day of June, 1919.

Whereas, the above named Commissioners of Road Improvements District No. 2 of Lafayette County, Arkansas, has sued out a writ of error to the Circuit Court of Appeals for the Eighth Circuit to reverse the order and judgment rendered in the above entitled suit by the Judge of the United States District Court for the Western District of Arkansas, Texarkana Division.

Now, therefore, the condition of this obligation is such that if the above named Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, shall prosecute said writ of error to effect and answer all damages and costs, [it] it shall fail to make said

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appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY, ARKANSAS.

By HENRY MOORE, JR.,
Attorney for said Road District.
HENRY MOORE, JR.

Approved this June 25, 1919.

FRANK A. YOUNG,
Judge.

Bond on Writ of Error of the St. Louis Southwestern Railway Company.)

(Filed in the U. S. District Court June 25, 1919.)

Know all men by these presents: That the St. Louis Southwestern Railway Company of St. Louis, Missouri, and T. J. Gaughan of the County of Ouachita and State of Arkansas, are held and firmly bound unto the above named Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, in the sum of Five Hundred (\$500.00) Dollars, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators or successors, jointly and severally, firmly and by these presents.

Signed and dated this 26th day of June, 1919.

Whereas, the above named St. Louis Southwestern Railway Company has sued out a writ of error to the Circuit Court of Appeals for the Eighth Circuit to reverse the order and judgment rendered in the above entitled suit by the Judge of the United States District Court for the Western District of Arkansas, Texarkana Division.

Now, therefore, the condition of this obligation is such that if the above named St. Louis Southwestern Railway Company shall prosecute said writ of error to effect and answer all damages and costs, if it shall fail to make said appeal good then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY.
By GAUGHAN & SIFFORD,
T. J. GAUGHAN.

Approved this June 25, 1919.
FRANK A. YOUNG,
Judge

(Clerk's Certificate to Transcript.)

I, Wm. S. Wellshear, Clerk of the District Court of the United States for the Western District of Arkansas, hereby certify that the foregoing transcript which is herewith transmitted in obedience to the commands of the Writ of Error annexed, is a true and correct copy of the record, bill of exceptions, [assignments] of errors, and all proceedings in the matter of Road Improvement District No. 2 of Lafayette County, Arkansas, Assessment of Benefits against St. Louis Southwestern Railway Company, No. 413 Law, as the same appear from the files and records of my said office in the Texarkana Division of said District.

Citations with acceptance of service are annexed and transmitted herewith.

In testimony whereof, I hereunto set my hand and affix the seal of said court, this July 29, 1919.

[Seal of the Dist. Court, West. Dist. of Ark., U. S. A.]

WM. S. WELLSHEAR,
Clerk.

No. 5454 filed Jul. 31, 1919.

E. E. KOCH,
Clerk.

No. 5470 filed Aug. 11, 1919.

E. E. KOCH,
Clerk.

283 And thereafter the following proceedings were had in said causes in the Circuit Court of Appeals, viz:

(Appearance of Mr. T. J. Gaughan as Counsel for Plaintiff in Error in Cause No. 5454.)

United States Circuit Court of Appeals, Eighth Circuit.

No. 5454.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff in Error.

VS.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT NO. 2 OF
LAFAYETTE COUNTY, ARKANSAS.

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

T. J. GAUGHAN.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Oct. 14, 1919.

Appearance of Mr. Daniel Upthegrove and Mr. J. R. Turney as Counsel for Plaintiff in Error in Cause No. 5454.)

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

DANIEL UPTHEGROVE,
J. R. TURNEY.

1710 Railway Exchange Building, St. Louis, Mo.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Oct. 15, 1919.

84 *(Appearance of Counsel for Defendant in Error in Cause No. 5454.)*

The Clerk will enter my appearance as Counsel for the Defendant in Error.

HENRY MOORE, JR.,
Texarkana, Ark.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Aug. 11, 1919.

Appearance of Counsel for Plaintiff in Error in Cause No. 5470.)

United States Circuit Court of Appeals, Eighth Circuit.

No 5470.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT NO. 2 OF
LAFAYETTE COUNTY, ARKANSAS, Plaintiff in Error.

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

HENRY MOORE, JR.,
Texarkana, Ark.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Aug. 11, 1919.

285 *(Appearance of Mr. T. J. Gaughan as Counsel for Defendant in Error in Cause No. 5470.)*

The Clerk will enter my appearance as Counsel for the Defendant in Error.

T. J. GAUGHAN.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Oct. 14, 1919.

(Appearance of Mr. Daniel Upthegrove and Mr. J. R. Turney as Counsel for Defendant in Error in Cause No. 5470.)

The Clerk will enter my appearance as Counsel for the Defendant in Error.

DANIEL UPTHEGROVE,
J. R. TURNEY,
1710 Railway Exchange Bldg., St. Louis, Mo.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Oct. 15, 1919.

(Order of Argument.)

December Term, 1919.

Wednesday, January 7, 1920.

No. 5454.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff in Error
vs.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT No. 2 of
LAFAYETTE COUNTY, ARKANSAS.

In Error to the District Court of the United States for the Western
District of Arkansas.

and

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No. 5470.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT No. 2 of
LAFAYETTE COUNTY, ARKANSAS, Plaintiff in Error.

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

In Error to the District Court of the United States for the Western
District of Arkansas.

These causes, Nos. 5454 and 5470, having been called for hearing in their regular order, argument was commenced by Mr. Henry Moore, Jr., for the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, continued by Mr. T. J. Gaughan for the St. Louis Southwestern Railway Company, and the hour for adjournment having arrived further argument was postponed until tomorrow morning.

(*Order of Submission.*)

December Term, 1919.

Thursday, January 8, 1920.

These causes, Nos 5454 and 5470, having been called for further hearing, Argument was resumed by Mr. T. J. Gaughan for the St. Louis Southwestern Railway Company, and concluded by Mr. Henry Moore, Jr., for the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas.

Theseupon, these causes were submitted to the Court on the transcripts of the records from said District Court and the briefs of counsel filed herein.

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(*Opinion.*)

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1919.

No. 5454.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff in Error,
vs.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY, ARKANSAS, Defendant in Error.

In Error to the District Court of the United States for the Western District of Arkansas.

Mr. T. J. Gaughan (Mr. Daniel Upthegrove and Mr. J. R. Turney were with him on the brief), for plaintiff in error.

Mr. Henry Moore, Jr., for defendant in error.

December Term, A. D. 1919.

No. 5470.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY, ARKANSAS, Plaintiff in Error.

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Defendant in Error.

In Error to the District Court of the United States for the Western District of Arkansas.

Mr. Henry Moore, Jr., for plaintiff in error.

Mr. T. J. Gaughan (Mr. Daniel Upthegrove and Mr. J. R. Turney were with him on the brief), for defendant in error.

288 Before Sanborn and Carland, Circuit Judges, and Van Valkenburgh, District Judge.

CARLAND, *Circuit Judge*, delivered the opinion of the Court:

This is a suit brought by the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, hereafter called plaintiffs, against the St. Louis Southwestern Railway Company, hereafter called defendant, to recover the sum of \$49,765.80, being the amount assessed as benefits by the Board of Assessors of said District against the real estate, buildings, and road bed, of defendant situated therein. The proceeding out of which this suit originated was commenced by the organization of the District under what is known as the "Alexander Road Law" of Arkansas. After the organization of the District the County Court appointed three persons to act as commissioners. These commissioners formulated plans, ascertained the cost of the improvement, and filed the same in the office of the County Clerk. Thereupon the County Court appointed three persons to act as a Board of Assessors for said District. The persons appointed as assessors met at a time designated by the president of the Board of Commissioners and assessed the benefits which in the judgment of said board would be received by the defendant by reason of the improvement contemplated, as it would effect the lands and other property of defendant in said district. This assessment amounted to the sum sued for in this suit as above stated and the same was duly certified by said Board of Assessors to the Board of Commissioners. The commissioners certified and filed the same in the office of the County Clerk. The County Clerk gave public notice as provided by law and therein stated that said assessment of benefits had been filed in his office and that any person, firm or corporation aggrieved by reason of any assessment therein made should appear before the County Court on a date to be fixed by the court for the purpose of having any errors adjusted or any wrongful or grievous assessment corrected, and that all grievances or objections to said assessments should be presented to said court in writing. On the 22nd day of May, 1918, the County Court of Lafayette County, Arkansas, fixed June 28, 1918, as the date for hearing all exceptions of persons, firm, or corporations to the assessment of

289 benefits as made by the Board of Assessors of said District.

On June 27th, the day before the hearing fixed by the County Court, the defendant duly removed the case against it to the United States District Court for the Western District of Arkansas, on the ground of diversity of citizenship. A motion to remand the case to the County Court was made in the court below by the plaintiffs on the ground that the proceeding was not a suit. The motion was denied. This ruling and the reduction of the amount of benefits are assigned as errors by the plaintiffs. The defendant assigns as error the refusal of the court below to further reduce the amount of benefits. After the motion to remand was denied the case subsequently was brought to trial upon the assessment of the Board of Assessors as certified to the County Court by the Board of Commissioners, the

amended exceptions of the defendant to said assesment, and the reply to said exceptions by the plaintiffs.

The defendant alleged among other things that the assessment was excessive and exorbitant and greatly and substantially exceeded the benefits which would be received by defendant's property by reason of the construction of the contemplated improvement; that said assessment was arbitrary and discriminatory as compared with the assessment made by the Board of Assessors upon other property within the District; that the maximum benefits which the property of defendant would receive by reason of the construction of the contemplated improvement would not exceed \$3,009.21, and that to the extent that the assessment of \$49,765.80, exceeded said sum of \$3,009.21, the assessment was unreasonable and arbitrary and would deprive the defendant of its property without due process of law. The trial was commenced before the District Court and a jury duly impanelled, but subsequently the court of its own motion withdrew the cause from the consideration of the jury for the alleged reason that there was no disputed question of fact, whereupon the plaintiffs and the defendant making no objection to the action of the court in withdrawing the case from the jury each asked the court to make certain findings of fact and conclusions of law which are set forth in the record. The court did not adopt the findings of either party but made findings of fact and conclusions of law of its own, and entered a judgment thereon against the defendant in the sum of \$10,485.48. As to the ruling of the trial court in

290 refusing to remand the case to the County Court we are of the opinion that the trial court did not err in this regard.

The proceeding under the Alexander Road Law, up to the time that the Board of Commissioners certified and filed the assessment of the Board of Assessors in the County Court was an ex parte proceeding, but of course, before the defendant could be compelled to pay the amount of the assessment it was entitled to defend against its liability therefor and this right is given by the requirement of the law that the County Court shall fix a date of which public notice shall be given on which the owner of property may appear and defend. The assessment by the Board of Assessors duly certified by the commissioners to the County Court stands in the place of a complaint and the public notice required by law of the time when the County Court will hear objections and exceptions to the assessment is in the nature of process. The exceptions of the defendant which the law requires to be in writing takes the place of an answer. We are clearly of the opinion that after the filing of the assessment of the Board of Assessors in the County Court the proceeding was a suit within the meaning of the law regulating the removal of suits from State to Federal Courts. Section 14 of the Alexander Road Law reads as follows:

"At the hearing provided for in the preceding section and after the County Court shall have considered the assessment of benefits, it shall enter its findings thereon, either confirming the assessment of benefits against said property, increasing or diminishing same, and the order made by the County Court shall have all the force and

effect of a judgment against all real property in said district, and it shall be deemed final, conclusive, binding and incontestable except by direct attack on appeal."

The County Court in this very case not recognizing the removal of the cause to the United States District Court, on June 28, 1918, rendered the following judgment:

"It is further considered, ordered and adjudged by the Court that the assessment of benefits made against the St. Louis Southwestern Railway Company and against the Louisiana & Arkansas Ry. Company as to the line of railroads of said respective companies in said District by the assessors for said District be approved and confirmed by the Court, and the Clerk of this Court is hereby instructed and directed to spread same upon the records as a permanent assessment roll for said District."

We are of the opinion that a proceeding which might result in a judgment against the defendant for the payment of money is a suit at law and that the assessment of benefits in such a proceeding is an assessment in the same way that a jury assesses damages in a civil action at law upon breach of contract or any other contested liability, and not a mere fixing of the value of property for the purpose of taxation. The case of *Horn v. Baker*, Supreme Court of Arkansas, (October 13, 1919) decides nothing to the contrary. The question was not involved in that case. The following cases sustain the ruling of the court below: *Smith v. Douglas County*, 254 Fed. 244; *Boom Company v. Patterson*, 98 U. S. 403, 25 L. E. 206; *Hess v. Reynolds*, 113 U. S. 73, 28 L. E. 927; *Pacific Removal Cases*, 115 U. S. 1, 29 L. E. 319; *Searl v. School District No. 2*, 124 U. S. 197, 31 L. E. 415; *Delaware County Commissioners v. Diebold Safe & Lock Co.*, 133 U. S. 473, 33 L. E. 674; *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239, 49 L. E. 462; *In re Jarnecke*, 69 Fed. 161; *In re Stutzman County*, 88 Fed. 337; *Terre Haute v. Ry.*, 106 Fed. 545; *Drainage District No. et v. Ry.*, 198 Fed. 253; *In re Mississippi River Power Co.*, 241 Fed. 194; *C. M. & St. Paul Ry. Co. v. District No. 8*, 253 Fed. 491.

The case cited *my* plaintiffs' counsel are not in point. The suit being in the Federal Court at law to recover a sum of money, each party in that court was entitled to a jury unless waived in the manner provided by the federal law. A question of jurisdiction is therefore presented which it is our duty to notice whether assigned as error or not. Section 649 U. S. R. S. provides how the court below might try the case without the intervention of a jury, namely, "whenever the parties, or their attorneys of record, file with the clerk a stipulation in writing waiving a jury." Section 700 U. S. R. S. provides that certain questions can be considered by this court when it has been tried without a jury in accordance with Section 649. In the case at bar neither the parties or their attorneys of record filed a stipulation in writing with the clerk waiving a jury, but the court of its own motion withdrew the case from the jury and each party without objection to such action of the court presented findings of fact and conclusions of law to

the court for its approval. The case therefore stands as a civil case at law tried by the court without any waiver of the jury as the law provides. Where this is so and the facts are not admitted in a case stated we have no jurisdiction to review any question on a writ of error except those which arise on the process, pleadings or judgment, and no such question appears. *Bond v. Dustin*, 112 U. S. 304; *Ladd & Tilton Bank v. Lewis & Hicks Co.*, 218 Fed. 310; *Ford v. U. S.*, 260 Fed. 657.

In order that our decision on this question may not be misunderstood, we remark that the trial court was mistaken when it said there was no disputed question of fact in the case. The important question for decision was as to the amount of benefits. The defendant alleged that the amount found by the assessors was excessive and exorbitant. The assessors assessed benefits against defendant at the rate of \$2,000 per mile on its main line, \$1,000 per mile on side tracks and \$1,500 per mile on the Shreveport Branch. They divided the land outside of the towns of Stamps, Lewisville and Buckner into zones numbered one, two and three depending on the distance from the proposed new road. Land within the first zone was assessed at \$1.00 per acre, second zone \$3.00, and the third zone \$2.00. Property within the above named towns was assessed at 15% of the value of the same returned for the purpose of general taxation. The trial court decided that the property of defendant within the above named towns should be assessed on a percentage basis or \$2,400 per mile and its property outside of said towns on the zone basis or \$54 per mile, thereby reducing the aggregate assessment of benefits from \$49,706.00 to \$10,485.48. That is, the trial court changed the territory in which the assessment made by the assessors should operate, but it adopted and enforced the basic assessment which defendant claimed was exorbitant and excessive and to support which it had introduced a large amount of testimony tending to show that the building of the new road would not benefit defendant's property at all. In confirming the basic assessment the trial court decided a most important question of fact. It is not true therefore that there was no disputed question of fact.

293 The judgment below therefore must be affirmed and it is so ordered.

Filed April 29, 1920.

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1919. Thursday, April 29, 1920.

No. 5454.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff in Error,

vs.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY, ARKANSAS,

and

5470.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY, ARKANSAS, Plaintiff in Error,

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

Error to the District Court of the United States for the Western District of Arkansas.

These causes came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Arkansas, and were argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in these causes, be, and the same is hereby, affirmed without costs to either party in this Court.

April 29, 1920.

295 United States Circuit Court of Appeals, Eighth Circuit.

No. 5454.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff in Error,

VS.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY, ARKANSAS, Defendant in Error.

In Error to the United States District Court for the Western District of Arkansas.

No. 5470.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY, ARKANSAS, Plaintiff in Error,

VS.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Defendant in Error.

In Error to the District Court of the United States for the Western District of Arkansas.

Petition for Rehearing.

Comes Road Improvement District No. 2 of Lafayette Co., Arkansas, defendant in error in suit No. 5454, and plaintiff in error in suit No. 5470, and files this, its petition, and asks that the Honorable Circuit Court of Appeals grant a rehearing in the above numbered causes; and that it set aside its judgment rendered therein, filed April 29th, 1920; and grant to this petitioner a rehearing upon the issues
296 involved in said numbered causes; and that it reverse the judgment of the trial court and render judgment in favor of this petitioner for the following reasons, to-wit:

1.

That this Honorable Court erred in sustaining the ruling of the trial court, in refusing to remand the case to the County Court of Lafayette County, and in affirming said ruling, and holding that the proceeding before said County Court was a suit within the meaning of the law authorizing the removal of causes from a state court to the District Court of the United States.

2.

That this Honorable Court erred in this, that after finding in its said opinion, filed April 29th, 1920, that the trial court "was mis-

taken when it said there was no disputed question of fact in the case," and that necessarily said trial court erred in withdrawing the issues from the consideration of the jury, this Honorable Court held that it had no jurisdiction to review the action of the trial court in said matter for the reason that neither of the parties had filed a stipulation in writing with the clerk, waiving a jury; whereas it was the duty of the court on the hearing of said appeal to give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties.

Road Improvement District No. 2 of Lafayette County, Arkansas, herewith files a brief in support of this petition for rehearing, and respectfully submits that for the reasons given, the judgment of the court herein should be set aside and said causes remanded.

HENRY MOORE, Jr.,

Attorney for Road Improvement District No.

2 of Lafayette County, Arkansas.

Certificate.

I, Henry Moore, on oath certify that I am of Counsel for Road Improvement District No. 2, of Lafayette County, Ark., and I further certify that in my opinion, the petition for rehearing above set forth, is well taken, and that in consideration of the facts in the record, and the errors of law committed by the court, the said Road Improvement District No. 2, of Lafayette County, Arkansas, is entitled to have said causes reversed and remanded.

HENRY MOORE.

297 (Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan.
24, 1920.

(Order Denying Petition for Rehearing.)

May Term, 1920.

Monday, August 2, 1920.

These causes came on this day to be heard upon the petition for a rehearing, filed by Counsel for Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of these causes, be, and the same is hereby, denied.

August 2, 1920.

(Motion for Stay of Mandate.)

Comes Road Improvement District No. 2, of Lafayette County, Arkansas, Defendant in Error, in Suit No. 5454, and Plaintiff in Error, in Suit No. 5470, and files this, its petition, and asks thereby

that the Honorable Circuit Court of Appeals will grant an order in these cases withholding the issuance of a Mandate herein for the term of thirty days from the filing of this petition, and the granting of an order thereon, in order that time may be given for the preparation and presentation of an Application to the Supreme Court of the United States or one of the Judges thereof, for a Writ of Certiorari herein, in order that these cases may be reviewed by the Honorable Supreme Court of the United States.

HENRY MOORE, Jr.,

*Atty. for Road Imp. Dist. No. 2,
Lafayette Co., Ark.*

Certificate.

I, Henry Moore, on oath as an Attorney, certify that I am of counsel for Road Improvement District No. 2, of Lafayette County, Arkansas, and I further certify on my oath that the foregoing petition for the withholding of the issuance of the Mandate herein, is not made for the purpose of delay, but is made in good faith with the intention of making the proper Application for a Writ of Certiorari in order that the above styled case may be reviewed by the Honorable Supreme Court of the United States.

HENRY MOORE,

Atty.

(Endorsed) Filed in U. S. Circuit Court of Appeals, Aug. 11, 1920.

(Order Staying Issuance of Mandate.)

September Term, 1920.

Monday, September 6, 1920.

Upon consideration of the motion of counsel for the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, for a stay of the issuance of the mandate of this Court in these causes, pending an application to the Supreme Court of the United States for a writ of certiorari.

It is now here ordered by this Court that the issuance of the mandate of this Court in these causes be, and the same is hereby stayed for a period of thirty days from this date pending said application to the Supreme Court for a writ of certiorari and if said application is presented within said time the mandate of this Court will then be withheld until the disposition thereof in the said Supreme Court.

September 6, 1920.

(Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcripts of the record from the District Court of the United States for the Western District of Arkansas as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in certain causes in said Circuit Court of Appeals wherein St. Louis Southwestern Railway Company was Plaintiff in Error and Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, was Defendant in Error, No. 5454, and also wherein Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, was Plaintiff in Error and St. Louis Southwestern Railway Company was Defendant in Error, No. 5470, as full, true and complete as the originals of the same remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this ninth day of September, A. D. 1920.

[Seal of United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,

*Clerk of the United States Circuit Court of
Appeals for the Eighth Circuit.*

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Stipulation.

In the Supreme Court of the United States.

No. 5454.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Plaintiff in Error,

vs.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY, ARKANSAS, Defendant in Error.

In Error to the District Court of the United States for the Western District of Arkansas.

No. 5470.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY, ARKANSAS, Plaintiff in Error,

vs.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Defendant in Error.

In Error to the District Court of the United States for the Western District of Arkansas.

To the clerk of the United States Circuit Court of Appeals for the Eighth Circuit:

Comes the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, Petitioners, by Henry Moore, Jr., its Attorney and

Comes the St. Louis Southwestern Railway Company, Respondent, by J. R. Turney its Attorney and files this stipulation consenting and agreeing that the certified transcript and record in the above cause now on file in the office of the Clerk of the Supreme Court of the United States can be taken as a return to the Writ of Certiorari addressed in said cause to the Judges of the United States Circuit Court of Appeals for the Eighth Circuit.

It is respectfully requested that in compliance with said Writ of Certiorari, the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit shall comply with same by forwarding a certified copy of this stipulation to the Clerk of the Supreme Court of the United States as his return to said Writ of Certiorari.

Signed this 1st day of November, 1920.

HENRY MOORE, JR.,

*Attorney for Road Improvement**District No. 2 of Lafayette Co.*

J. R. TURNEY,

*Attorney for St. Louis**Southwestern Ry. Co.*

(Endorsed:) No. 5454. St. Louis Southwestern Ry. Co., Plaintiff in Error, vs. Commissioners of Road Improvement District No. 2, etc. No. 5470. Commissioners of Road Improvement District No. 2, etc., Plaintiff in Error, vs. St. Louis Southwestern Ry. Co. Stipulation as to Return to Writ of Certiorari. Filed Nov. 4, 1920. E. E. Koch, Clerk.

301 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, Greeting:

Being informed that there is now pending before you a suit in which St. Louis Southwestern Railway Company is plaintiff in error, and Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, are defendants in error, on writ of error and cross writ of error, Nos. 5454 and 5470, which suit was removed into the said Circuit Court of Appeals by virtue of writs of error to the District Court of the United States for the Western District of Arkansas, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit

302 United States, do hereby command you that you send without delay to the said Supreme Court as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-seventh day of October, in the year of our Lord one thousand nine hundred and twenty.

JAMES D. MAHER,

Clerk of the Supreme Court of the United States

303 [Endorsed:] File No. 27,909. Supreme Court of the United States, October Term, 1920. No. 552. Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, vs. St. Louis Southwestern Railway Company. Writ of certiorari. Filed Nov. 4, 1920. E. E. Koch, clerk.

Return to Writ.

UNITED STATES OF AMERICA,

Eighth Circuit, ss:

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of cer-

torari in the cases of St. Louis Southwestern Railway Company, Plaintiff in Error, v. Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, No. 5454, and Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, Plaintiff in Error, v. St. Louis Southwestern Railway Company, No. 5479, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said causes as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this fourth day of November, A. D. 1920.

[Seal of United States Circuit Court of Appeals, Eighth Circuit.]

E. E. KOCH,

*Clerk of the United States Circuit Court
of Appeals for the Eighth Circuit.*

304 [Endorsed:] File No. 27,909. Supreme Court U. S., October Term, 1920. Term No. 552. Commissioners of Road Improvement District, etc., petitioner, vs. St. Louis Southwestern Railway Company. Writ of certiorari and return. Filed November 6, 1920.

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No. ~~552~~

IN THE

Office Supreme Court, U. S.

FILED

SEP 20 1920

JAMES D. MAHER,
CLERK.

Supreme Court of the United States

Petition for Writ of Certiorari to the United States
Circuit Court of Appeals, Eighth Circuit,
in Nos. 5454 and 5470.

COMMISSIONERS OF ROAD IMPROVEMENT
DISTRICT No. 2 OF LAFAYETTE COUNTY,
ARKANSAS, PETITIONERS,

VS.

ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, RESPONDENT.

BRIEF FOR PETITIONERS.

HENRY MOORE, JR.,
*Attorney for Commissioners of
Road Improvement District No. 2
of Lafayette County, Arkansas.*

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IN THE
Supreme Court of the United States

Petition for Writ of Certiorari to the United States
Circuit Court of Appeals, Eighth Circuit,
in Nos. 5454 and 5470.

COMMISSIONERS OF ROAD IMPROVEMENT
DISTRICT No. 2 OF LAFAYETTE COUNTY,
ARKANSAS, PETITIONERS.

VS.

ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, RESPONDENT.

BRIEF FOR PETITIONERS.

*To the Supreme Court of the
United States of America:*

The petition of Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas, for a Writ of Certiorari, directed to the Circuit Court of Appeals for the Eighth Circuit, to bring before the Supreme Court the cases of

No. 5454.

St. Louis Southwestern Railway Company,
Plaintiff in Error,

vs.

Commissioners of Road Improvement District
No. 2 of Lafayette County, Arkansas,
Defendant in Error.

In error to the District Court of the United States
for the Western District of Arkansas.

No. 5470.

Commissioners of Road Improvement District
No. 2 of Lafayette County, Arkansas,
Plaintiff in Error,

vs.

St. Louis Southwestern Railway Company,
Defendant in Error.

In error to the District Court of the United States
for the Western District of Arkansas.

*Commissioners of Road Improvement District No. 2 of
Lafayette County, Arkansas, Petitioners,*

vs.

*St. Louis Southwestern Railway Company,
Respondent.*

**Petition for Writ of Certiorari to the United States
Circuit Court of Appeals for the Eighth Circuit.**

Statement of the matter involved and reasons for the allowance of the Writ of Certiorari, the said petitioners respectfully show to the Court as follows:

1. Road Improvement District No. 2 of Lafayette County, Arkansas, hereinafter called the Road District, was formed under the so-called Alexander Act, Act No. 338, passed by the General Assembly of the State of Arkansas during the year 1915. No question is raised as to the validity and legality of the District. In accordance with Section 11 of said Act, the Commissioners appointed to assess benefits accruing from building the road, assessed the respective benefits against the country lands, against the town lots in the Towns of Lewisville, Stamps and Buckner, and against the railroad tracks of the St. Louis Southwestern Railway Company, the party to this action, and also against the Louisiana and Arkansas Railway Company, being the two railroads running through the Road District. As required by said Section 11, the assessments of benefits against the railroad were made at so many dollars per mile of track. The main line of the St. Louis Southwestern Railway Company, hereinafter called the Cotton Belt Railroad runs East and West

through the District approximately parallel to the road, and the Shreveport Branch of the Cotton Belt runs South from the road, being almost at right angles to same. The Louisiana and Arkansas Railway Company runs North and South crossing the road at right angles. The total assessed valuation of all the property within the Road Improvement District is \$1,443,000.25. The total assessed benefit for road purposes is \$320,825.25. The assessed valuation of the Cotton Belt Railroad within the District is \$581,900.00 and the assessment of benefits for road purposes against said Cotton Belt Railroad is \$49,606.50. Within the District are 16.94 miles of main line (that running East and West), and 9.21 miles of side track; also 3.5 miles of main line of the Shreveport Branch. The main line of the Cotton Belt is assessed for state and county purposes at \$28,500.00 per mile, and the benefits against same at \$2000.00 per mile. The side track is assessed at \$3000.00 per mile for state and county purposes, and benefits against same at \$1000.00 per mile. The Shreveport Branch is assessed for state and county purposes at \$18,000.00 per mile, and the benefits against same at \$1500.00 per mile (Tr. pages 218-54). The portion of the Louisiana and Arkansas Railway Company within the Improvement District is assessed for state and county purposes at \$119,350.00, and the benefits against same for the Road District is \$20,080.00. The assessment per mile against the Louisiana and Arkansas Railway Company for the state and county purposes is \$12,000.00, and the benefits for road purposes \$1,500.00 per mile. The assess-

ments against the side track of the said railway company is \$2500.00 per mile, and the benefits for road purposes \$1000.00 per mile. The assessed value of the incorporated Towns of Lewisville, Stamps and Buckner for state and county purposes is \$383,270.00, and the assessed benefits for the road 15 per cent thereof, \$57,490.00. The approximate acreage of country property not including that within the Towns of Lewisville, Stamps and Buckner, is 69,000 acres, and the assessed value of said lands for state and county purposes \$364,080.25, and the assessed benefits against the lands for road purposes is \$212,103.00 (Tr. page 219).

11. The lands were divided into zones according to their proximity to the improved roads; the lands in the one-mile zone being assessed a benefit for road purposes of \$4.00 per acre; within the two-mile zone of \$3.00 per acre; and within the three-mile zone \$2.00 per acre. A small acreage lying more than three miles from the road, but within the Improvement District was assessed a benefit of \$1.00 per acre. In making such assessment of benefits of country property no consideration was given the improvements on the land or the assessed value of the land, whether improved or unimproved, within the respective zones. The assessors stating that in their opinion all of the lands within the respective zones would receive approximately an equal benefit from building of the road, or if any lands received a greater benefit than the other, the wild land, which would be improved and brought on the market because of the road, would receive a greater benefit than the unimproved.

III. The urban property being in town lots or very small acreage, but of a different character from farm property, could not be assessed on an acreage basis, and the benefits accruing to the towns, being of an entirely different character from that to the country lands, the assessors took the valuation on the tax books for state and county purposes, and assessed a flat benefit for road purposes of 15 per cent thereof.

IV. The railroad property, being of still a third character different in its use and kind from either the country property or the city property, was classified separately and assessed as required by Section 11 of the above mentioned Act 338, at a benefit of so many dollars per mile. As noted from the assessments for state and county purposes the main line of the Cotton Belt is two and one-half times as valuable as the main line of the Louisiana and Arkansas Railway Company, and the Shreveport Branch of the Cotton Belt fifty per cent more valuable than that of the said Louisiana and Arkansas Railway Company. The assessors, however, not taking into consideration the value of the roads, but the benefits accruing, placed a benefit of \$2000.00 per mile against the trunk line of the Cotton Belt, and a benefit of \$1500.00 per mile each against the Louisiana and Arkansas Railway Company and the Shreveport Branch of the Cotton Belt. Against the side tracks of the two roads an equal benefit of \$1000.00 per mile was placed. The Louisiana and Arkansas Railway Company accepted the benefit assessment against same as just and made no appeal therefrom. No other owner of property within

the Road Improvement District has protested against or appealed from the assessment of benefits made for road purposes.

V. On the day set for the hearing before the County Court for any protests that might be made against the benefit assessment for road purposes by parties desiring to appeal from the Board of Commissioners to the County Court, which under Section 13 of said Alexander Act sits as a Board of Review from the decision of the Commissioners, the Cotton Belt Railroad filed its petition for removal to the U. S. District Court for the Western District of Arkansas, alleging that this is a controversy in a suit of a special nature pending before a court of competent judicial authority, and that the amount in controversy exceeds the sum of \$3000.00, and that the parties thereto are citizens, one of the State of Missouri and the other of the State of Arkansas (Tr. page 50).

Motion was filed by the Road District to remand the cause to the Lafayette County Court, alleging that the U. S. District Court is without jurisdiction to try the matter at controversy in that the proceeding before the County Court is an administrative proceeding, and therefore not cognizable by the Federal Court; and the proceedings of this special assessment do not constitute a suit within the meaning of the Federal judiciary laws, but the County Court is authorized under the so-called Alexander Act (the Road Improvement District Act of the State of Arkansas), to act as a Board of Review in adjusting the amounts of benefits placed by the assessors

against the various lands, town lots and railroad tracks within the Road Improvement District; and in so acting exercises the powers of a Board of Review of Assessors—and does not exercise the powers of a court granted to the County Courts under the Constitution and laws of the State of Arkansas (Tr. page 57).

VI. The authority and jurisdiction of the County Courts is derived from Section 34 of Article 7 of the Constitution of the State of Arkansas.

"The judge of the county court shall be the judge of probate, and have such exclusive original jurisdiction in matters relative to the probate of wills, the estates of deceased persons, executors, administrators, guardians and persons of unsound mind and their estates as is now vested in the Circuit Court, or may be hereafter prescribed by law. The regular terms of the court of probate shall be held at the times that may hereafter be prescribed by law."

Under Section 23 of the Schedule of the Constitution of the State of Arkansas,

"The county courts provided for in this constitution shall be regarded in law as a continuance of the Board of Supervisors now existing by law."

Said Board of Supervisors, the predecessors of the County Court, received their authority from the Legislature under Section 1 of Article 7 of the Constitution of Arkansas of 1868, being as follows:

"The judicial power of the state shall be vested in the Senate, sitting as a court of impeachment, and the Supreme Court, Circuit Courts, and such

other courts inferior to the Supreme Court as the General Assembly may from time to time establish."

After due consideration the motion to remand on behalf of the Road District was by the court overruled, and exceptions to such action on the part of the court duly saved (Tr. page 58).

Out of an abundance of caution in order to preserve this question of jurisdiction a certificate showing that the question of jurisdiction had been raised and a motion to remand filed by the Road District on the ground that this is not a suit within the meaning of the removal statutes, as no appeal is contemplated or allowed by law in a proceeding of this kind, from the County Court of Lafayette County, acting as a Board of Supervisors, to the said U. S. District Court, was presented to the trial judge, who declined to sign same, making a notation on said certificate as follows:

"The foregoing is presented to the trial judge, and he declined to sign same this the 25th day of June, 1919. Signed Frank A. Youmans." (Tr. pages 269 and 270).

A demurrer was filed to the exceptions of the Railway Company by the Road District, and afterwards when amended exceptions were filed on behalf of the Railway Company (Tr. 59 to 61), said demurrer was re-propounded to the amended exceptions (Tr. 61-62). Said demurrer was by the court overruled and exceptions thereto duly saved by the Road District (Tr. 64-65). The Road District then filed its reply, alleging that

the railroad track within the limits of the road district would be of no value severed from the remaining track running through the States of Texas, Louisiana, Arkansas and Missouri, but that the railroad must be considered as a unit or whole, alleging that great benefit would be received by the railroad company because of the increase in traffic due to the building of the improved gravel road, alleging that the benefit had been assessed against the railroad track and against the buildings without taking into consideration the franchise of the railroad company in making such assessment, and asserting that the railway company is a different sort, kind and character of property from the city property or country lands, and must therefore be assessed by the mile, as it is impracticable to assess same on an acreage or valuation basis (Tr. pages 61-64).

On the 19th day of May, 1910, the above suit came on for trial before the Honorable Frank A. Youmans, Judge for the Western District of Arkansas, who on or about said 19th day of May, 1910, on his own motion, after the introduction of evidence withdrew the cause from the consideration of the jury, and filed his decision to the following effect: He found that the assessment of benefits against the property of the defendant railway company in the country, being that outside of the corporate Towns of Buckner, Stamps and Lewisville should be assessed on an acreage basis, the same as lands within said zone were assessed, to-wit: \$4.00 per acre, and the amount of acreage in each mile, the right-of-way being 100 feet in width, being slightly in excess of

12 acres per mile, the court found a total benefit per mile against the Railway Company of \$54.00. The total benefit for all of the railroad track outside of said towns as found by the court to be \$885.48 (Tr. page 68). To this action of the court the Road District excepted because the kind, character and use of the property was not taken into consideration in making said finding and assessment by the court.

The court further found that the assessment of benefits against the track of the railway company within the corporate limits of the Towns of Lewisville, Stamps and Buckner should be at the same percentage of the actual value of said property including the rail, ties, dump, and all improvements on said property as the assessment of benefits against town lots within said Towns of Lewisville, Stamps and Buckner, and used said basis. After agreement of counsel had been had as to such value, making due deduction so the franchise of the company would not be taken into consideration, the court found a benefit against each mile of railroad within the corporate limits of said towns of \$2400.00 per mile, or a total benefit of \$9600.00; to said finding and holding of the court the railroad company objected. The total benefit found by the court against all of the track of the Railroad Company within said District was \$10,485.48 and to this finding as to the total benefit, both the railroad company and the Road District excepted. The same railroad track being assessed a benefit of \$54.00 per mile when in the country and a benefit of

\$2400.00 per mile when it crosses the corporate limits of the Towns of Lewisville, Stamps and Buckner.

On or about the 25th day of June, 1919, your petitioners were duly allowed by the said Honorable Frank A. Youmans, District Judge for the Western Division of Arkansas, an appeal from his said decree to the United States Circuit Court of Appeals for the Eighth Circuit, and it was ordered that a certified transcript of the record and all proceedings in said case be forthwith transmitted to the said United States Circuit Court of Appeals.

A certified transcript of the record and of all proceedings in the case was duly transmitted to the said United States Circuit Court of Appeals, and on or about the 7th day of January, 1920, an appeal by your petitioners asking that said decree be reversed came on to be heard, and together with the cross-appeal by the respondent was argued by counsel for all parties before Judges Sandlin, Garland and Van Valkenburgh, and thereafter and on the 29th day of April, 1920, said United States Circuit Court of Appeals rendered and filed an opinion and decision written by Judge Garland, which among other things, held that the assessment of benefits by the County Court of Lafayette County, Arkansas, was in fact a suit at law, and not a mere fixing of the value of property for the purpose of taxation, and sustained the decision of the District Court holding that it had jurisdiction in said cause. Said court held that the District Court was mistaken when it said there was no disputed question of fact in the case, but held

since neither of the parties, or their attorneys of record, filed a stipulation with the Clerk waiving a jury, that since no objection was made to the action of the court in withdrawing the case from the jury, that the mistake of the court in holding there was no disputed question of fact could not be corrected. Said opinion and decision affirmed said decree of said District Court.

The questions of law involved in this case are substantially as follows:

1st. Did the District Court for the Western District of Arkansas have jurisdiction to hear this case, and did the said District Court err in not remanding said cause to the County Court of Lafayette County, Arkansas, as this proceeding is not a "suit" within the meaning of the removal statute, over the objections and exceptions of the Commissioners of Road Improvement District No. 2 made at the time that said motion to remand was overruled? Did the United States Circuit Court of Appeals commit error in sustaining the jurisdiction assumed by said District Court?

2nd. Did the United States Circuit Court of Appeals commit error in not reversing the cause in a trial upon its merits after finding that the District Court was mistaken and erred in withdrawing said cause from the jury on its own motion, and in holding there was no disputed question of fact in the case?

All of said questions were duly raised and argued by your petitioners in the said District Court and in said Circuit Court of Appeals, and in said Circuit Court

of Appeals a petition for rehearing was presented raising the questions above, which petition for rehearing was overruled by said Circuit Court of Appeals.

Concerning the question of jurisdiction, Judge Garland said in his opinion, which is reported in Volume . . . of the Federal Reporter, at page . . .

"We are of the opinion that a proceeding which might result in a judgment against the defendant for the payment of money is a suit at law, and the assessment of benefits in such a proceeding is an assessment in the same way that a jury assesses damages in a civil action at law upon a breach of contract or any other contested liability, and not a mere fixing of the value of property for the purpose of taxation."

On the question as to the error of the court in withdrawing the case from the jury said Judge held,

"In the case at bar neither the parties, nor their attorneys of record filed a stipulation in writing with the Clerk waiving a jury, but the court of its own motion withdrew the case from the jury, and each party without objection to such action of the court presented findings of fact and conclusions of law to the court for its approval. The case, therefore, stands as a civil case at law, tried by the court without any waiver of the jury, as the law provides. Where this is so and the facts are not admitted in a case stated, we have no jurisdiction to review any question on a writ of error, except those which arise in the process, pleading or judgment, and no such question appears. In order that our decision on this question may not be misunderstood, we remark that the trial of the court was mistaken when it said there was no disputed question of fact in the case."

VII. In the case of *Upshur County v. Reisch*, 135 U. S., page 467, the Supreme Court in considering a similiar case transferred from the County Court of West Virginia held,

"Is an appeal from an assessment of property for taxation a suit within the meaning of the law? In ordinary cases it certainly is not. By the laws of all or most of the states, taxpayers are allowed to appeal from the assessment of their property by the assessor to some tribunal constituted for that purpose, sometimes called a board of assessors, or appeal, or whatever called, it is not usually a court, nor is the proceeding a suit between the parties. It is a matter of administration and the duties of the tribunal are administrative and not judicial in the ordinary sense of the term, though often involving the exercise of *quasi* judicial function. Such appeals are not embraced in the Removal Act. It is true that the tribunal or appeal is called the county court, but it has no judicial powers except in matters of probate; in all other matters it is an administrative board, charged with the management of county affairs."

"The original assessment made by the county assessors could not be called a suit, and could not be removed, and there is justly no more reason for placing an assessment on appeal within that category, and it is nothing but an assessment; in either case, it is an administrative act; the fact that the board of appeal may swear witnesses, does not make the proceeding a suit." *Upshur Co. v. Reisch*, 135 U. S. p. 467.

In the case of *M. P. Railway Company v. Izard County Highway Improvement District*, Southwestern Reporter, Volume 220, page 452, the Supreme Court of the State of Arkansas, where the identical question at

issue was presented held that the action of the county court in reviewing and confirming benefits assessed against land within the Road Improvement District was not a judicial but an administrative function, and after citing the case above quoted of *Upshur County v. Reich*, held that such assessment was not a "suit" within the meaning of the law authorizing the removal of cases from a state to a federal court.

In a latter case, *Monette Road Improvement District v. Dudley*, Supreme Court Reporter, Volume 3, page 473, the Supreme Court of Arkansas affirmed the decision above.

Your petitioners further aver that the present case is one in which it is proper for this court to issue a Writ of Certiorari for the following reasons:

1st. Because the United States Circuit Court of Appeals for the Eighth Circuit has declined to follow the decision of this court as set forth in *Upshur County v. Reich*.

2nd. Because the public interest and the interest of jurisprudence requires that the decision of this court upon the question of jurisdiction involved herein be made definite and certain. Since several hundred road districts have been formed in Arkansas under the Act in question (Alexander Act), or by special Acts, it is, therefore, a matter of vital interest to the entire State that this question of jurisdiction be definitely settled.

3rd. Because there is a conflict in this respect between the law as expounded by said Circuit Court of

Appeals and the decisions in the Supreme Court for the State of Arkansas, situate in the same district and circuit.

4th. Because the Circuit Court of Appeals failed to take into consideration Section 1246, as follows:

"New Trials—All of the said courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law.

On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions, which do not affect the rights of the parties (40 Stat. 1181)" (1919 Supplement to U. S. Compiled Statutes, Annotated, West Publishing Co., p. 273).

Wherefore, your petitioners pray that this Honorable Court will be pleased to grant a Writ of Certiorari in this case to the Circuit Court of Appeals for the Eighth Circuit to bring up this case to this Honorable Court for such proceeding therein as to this Honorable Court may seem just.

COMMISSIONERS OF ROAD IMPROVEMENT
DISTRICT NO. 2 OF LAFAYETTE COUNTY,
ARKANSAS.

By H. A. McCANTS, *President*.

Attest: J. M. HUDGINS, *Secty.*

HENRY MOORE, JR.,
Attorney for Petitioners.

State of Arkansas, Western District, Texarkana Division.

H. A. McCants, being duly sworn, says:

I am President of the Commissioners of Road Improvement District No. 2 of Lafayette County, Arkansas; I have read the foregoing petition, and the same is true to my own knowledge, information and belief. My knowledge is derived from the records in this case and from what has taken place in my presence and hearing in the court in which this action has been heard.

H. A. McCANTS.

Attest: J. M. HUDGINS, *Secty.*

Subscribed and sworn to before me this 4th day of September, A. D. 1920.

(Seal)

BROOKS MONTGOMERY,
*Notary Public, Lafayette
County, Arkansas.*

I hereby certify that I have examined the foregoing petition and in my opinion the petition is well founded, and that this case is one in which the prayer of the petitioners should be granted by this court.

HENRY MOORE, JR.,
Counsel for Petitioners.

ASSIGNMENT OF ERRORS.

1st. The United States District Court and the Circuit Court of Appeals for the Eighth Circuit were without jurisdiction to hear this case, and the motion on behalf of the petitioner to remand this cause to the County Court of LaFayette County, Arkansas should have been granted, as said case is not a suit within the meaning of the Federal Statutes.

2nd. Because the Circuit Court of Appeals failed to take into consideration Section 1246 of the Revised Statutes, and failed to grant a new trial after deciding that the United States District Judge was in error in holding that there was no question of fact involved, when in accordance with said section this cause should have been remanded for a trial of said questions of fact by the jury.

BRIEF ON PETITION FOR WRIT OF CERTIORARI.

Under Section 11 of Act 338 of the Acts of Arkansas, for the year 1915, the road law called the Alexander law, the assessors appointed to assess the benefits shall inscribe in a book in appropriate columns the name of the owner of the property, the assessed value and assessed benefits, assessing the railroad benefits by the mile. Under Section 12, said assessors shall assess in said book the damages, if any, accruing to the real property. Then follow Sections 13 and 14, being the sections of the Act under consideration in this cause, same being quoted below, to-wit:

"Section 13. As soon as the assessors have completed the work of assessment for the district, they shall certify to same and deliver it to the board of commissioners. The commissioners shall immediately file same in the office of the county clerk, and the county clerk of said county shall give public notice by two consecutive insertions in a publication having a general circulation in said county. Said notice shall give a description of all lands embraced in said district in the largest subdivision practicable and shall state that said assessment of benefits and damages has been filed in said office and shall call upon any person, firm or corporation aggrieved by reason of any assessment to appear before the County Court on some date to be fixed by the court, not less than five days after the last insertion therein, for the purpose of having any errors adjusted, or any wrongful or grievous as-

assessment corrected, and all grievances or objections to said assessment shall be presented to said court in writing. Any person who is damaged by reason of said improvement may appear before said court at the same time, for the purpose of having the assessment of damages adjusted.

The County Court shall hear and determine the justness of any assessment of benefits, or damages, and is hereby authorized to equalize, lower or raise any assessment upon a proper showing to the court.

Section 14. At the hearing provided for in the preceding section, and after the County Court shall have considered the assessment of benefits, it shall enter its findings thereon, either confirming the assessment of benefits against said property, increasing or diminishing same, and the order made by the County Court shall have all the force and effect of a judgment against any real property in said district, and it shall be deemed final, conclusive, binding and incontestible except by direct attack on appeal.

Any owner of real property within the district may appeal from the judgment fixing the assessment of benefits or damages within ten days by filing an affidavit for appeal and stating therein the special matter appealed from, but such appeal shall affect only the particular tract of land or other real property concerning which said appeal is taken, and on appeal only the special matters set up in said affidavit shall be considered by the Circuit Court.

If no appeal is taken within that time, judgment shall be deemed final, conclusive and binding upon all real property in the district, and the owners thereof, and said assessment of benefits shall not be subject to collateral attack.

The board of commissioners on behalf of the district or any owner of real property therein, may

likewise appeal from any order of the County Court refusing to enter such judgment, and said County Court may be compelled by mandamus to enter such judgment."

This proceeding is not a suit within the meaning of the Federal Removal Acts. The County Court, in passing upon the benefits received from the building of the road under the sections above quoted, was acting in an administrative and not a judicial capacity. Said County Court, occupying the position and having the same authority as that of the Board of Supervisors under the Constitution of Arkansas, of 1868.

The authority and jurisdiction of the County Courts is derived from Section 34 of Article 7 of the Constitution of the State of Arkansas.

"The judge of the County Court shall be the judge of probate, and have such exclusive original jurisdiction in matters relative to the probate of wills, the estates of deceased persons, executors, administrators, guardians and persons of unsound mind and their estates as is now vested in the Circuit Court, or may be hereafter prescribed by law. The regular terms of the court of probate shall be held at the times that may hereafter be prescribed by law."

Under Section 23 of the Schedule of the Constitution of the State of Arkansas,

"The county courts provided for in this constitution shall be regarded in law as a continuance of the Board of Supervisors now existing by law."

Said Board of Supervisors, the predecessors of the County Court, received their authority from the Legislature

under Section 1 of Article 7 of the Constitution of Arkansas of 1868, being as follows:

"The judicial power of the state shall be vested in the Senate, sitting as a court of impeachment, and the Supreme Court, Circuit Courts, and such other courts inferior to the Supreme Court as the General Assembly may from time to time establish."

Since the decision of this cause by the lower court, the Arkansas Supreme Court has definitely decided, in *Horne v. Baker*, opinion dated October 13, 1919, that in approving the plans and in determining finally the benefits received from the building of the road, the County Court is acting in its administrative rather than its judicial capacity. Said decision is to the effect that an appeal may be taken to the Circuit Court from such administrative decisions, but it is definitely and finally settled there that such decisions as the one at issue in the present cause are administrative. Said decision also refers to Schedule 23 of the Constitution of 1874, where the county courts were made successors and a mere continuance of the former board of supervisors of the counties, and thus given exclusive, original control over internal improvements within their counties.

"There is nothing in the act referred to, however, which indicates that the County Court was to act in this instance in any manner other than as it ordinarily acts in the disposition of administrative matters over which it is given jurisdiction by the constitution. * * * The statute probably did not contemplate the allowance of an appeal in this class of cases, for the legislation is borrowed from states where acts prescribed to be performed by the

County Court are administrative purely, and where no appeal is allowed, but the right to appeal has been found elsewhere, and is established by the decisions of this court. * * * Under authority of Section 33, Art. 7, of the Constitution of the State of Arkansas, appeals have been uniformly granted as a matter of constitutional right from all judgments of the County Court, and no distinction has been made between administrative matters and judicial causes." *Horne v. Baker*, Ark. Supreme Court Reporter, date October 18, 1919.

From the above, it is clearly established that the County Court in performing the duties prescribed by the sections of the constitution above cited, acted under the authority of the legislature, as a board of review, and not in its judicial capacity. This identical question came before the United States District Court in Chicago, and said court held that the County Court, under authority granted by the legislature, was acting in a legislative or administrative capacity, and therefore the action was not a *suit* within the meaning of the Federal Removal Act, and the Federal Court was without jurisdiction.

In Re City of Chicago, 64 Fed. page 897.

In two later cases the above mentioned decision was referred to and upheld. However, the cases were not remanded, since under the specific authority of the constitution creating the County Court in one instance, and under the decisions of the Supreme Court of the state in the other instance, the county courts could not act in any other than judicial capacity.

C. M. & St. P. Ry. Co., 198 Fed. page 253.

In Re Mississippi Power Co., 241 Fed. page 194.

There is also the recent case of *Smith v. Douglas County, Nebraska*, 254 Fed. page 246, decided by the Court of Appeals of the Eighth Circuit, and on which decision the opinion of the District Court seems to have been based. Attention is called, however, to the fact that the County Court was given authority to determine all questions in relation to taxes, not being confined, as in the present case, to merely determining the amount of such taxes or benefits. Further, as in the cases above cited, the county courts in Nebraska, under the constitution, are given certain original jurisdiction and such other jurisdiction as may be given by statute (see page 246, 254 Fed. Rep.).

This clearly differentiates said decision, and the decisions in other states having only judicial authority from the present cause arising under the laws and Constitution of Arkansas, where the County Court exercises both judicial and administrative powers. The assessment of benefits in the instant case is a local assessment and not a tax in the sense in which these words are used in the Constitution of Arkansas, and since the County Court, as a court under the constitution, has no authority over local assessment or over taxes, save county taxes, the legislature could not give the court jurisdiction in a judicial capacity to determine the amount of benefits received by lands within the road district.

"The local assessment necessary for the proper execution of the act (creating a ditch improvement district) in any given locality, are not taxation in the sense in which that term is used in Sec-

tion 2, Art. 23 of the Constitution, as has been often held by this court." *Cribbs v. Benedict*, 64 Ark. p. 562.

In the Missouri case, strongly relied upon by the railway company, under Section 36 of Art. 6 of the Missouri Constitution, the County Court has jurisdiction to transact all county business, and all other business such as may be prescribed by law. Said County Court of Missouri, therefore, can only act in a judicial capacity, having no authority as an administrative body, as is the case in Arkansas. 191 Fed. page 259.

In the Iowa case, relied upon, under the decision of the Supreme Court of Iowa, only judicial functions may be exercised by the County Court.

"but powers that are not to be exercised in the discharge of the functions of the judicial department cannot be conferred on the courts, or changes designated by the constitution as part of the judicial department of the state." *State v. Barker*, 116 Iowa, page 96, quoted in 241 Fed. Rep. p. 198.

And in *Smith vs. Douglas County*, the Nebraska case, the county courts are given, not administrative, but such judicial, jurisdiction as may be granted by statute. 254 Fed. Rep. page 246.

A careful reading of the above cases shows that they fully sustain the case heretofore cited, *In Re City of Chicago*, the distinction being that county courts in the last three cases cannot exercise administrative powers, whereas in the Chicago case and in Arkansas, the county courts' functions are largely occupied in administrative rather than judicial actions.

The question at issue has been finally and definitely settled by the decision of the Supreme Court of the United States in *Upshur County v. Reisch*, 135 U. S. page 467, arising in the State of West Virginia, and in which state the County Court, just as in Arkansas, exercises administrative as well as judicial functions. In said case the United States Supreme Court decided that the Federal Court could not take jurisdiction over the exercising of such administrative or judicial functions, and that the cause not being a suit within the Federal Removal Act, same was remanded to the County Court. Practically the same question was at issue in the *Upshur* case, as in the present, it being not the right to tax property, but the amount of such taxes that could justly be laid against the property. The Supreme Court held:

"Is an appeal from an assessment of property for taxation a *suit* within the meaning of the law? In ordinary cases it certainly is not. By the laws of all or most of the states, taxpayers are allowed to appeal from the assessment of their property by the assessor to some tribunal constituted for that purpose, sometimes called a board of assessors, or appeal, or whatever called, it is not usually a court, nor is the proceeding a suit between the parties. It is a matter of administration and the duties of the tribunal are administrative and not judicial in the ordinary sense of the term though often involving the exercise of *quasi* judicial function. Such appeals are not embraced in the Removal Act. It is true that the tribunal or appeal is called the county court, but it has no judicial powers except in matters of probate; in all other matters it is an administrative board, charged with the management of county affairs."

"The original assessment made by the county assessors could not be called a suit, and could not be removed, and there is justly no more reason for placing an assessment on appeal within that category, and it is nothing but an assessment; in either case, it is an administrative act; the fact that the board of appeal may swear witnesses, does not make the proceeding a suit." *Upshur Co. v. Reisch*, 135 U. S. p. 467.

The County Court, acting as the board of appeal, from the decision of the assessors, as in the *Upshur* case, above cited, had no judicial powers, and the District Court erred in not remanding this cause to the County Court because of its lack of jurisdiction.

It was held in *ex parte Wisner*, 203 U. S. page 449, that the consent of parties could not give jurisdiction to the Federal Courts where such jurisdiction did not exist by law. This holding however, seems to have been changed in *In Re Moore*, 209 U. S. page 490, and in the case of *In Re Winn*, 213 U. S. page 458, it being held that consent of parties could confer jurisdiction where the Federal Court had no jurisdiction of the controversy, originally, or by removal. In a later case, *Kreigh v. Westinghouse, Church, Kerr & Co.*, 214 U. S. page 249, where it appeared no motion was made to remand, the court held that jurisdiction was obtained by consent of the parties. In this case a motion to remand having been filed in apt time, the District Court and this court has no jurisdiction unless the cause of action is a suit of a civil nature, and one of which this court could not originally have taken jurisdiction.

Unless the assessors for the Road District could have originally filed its report in the United States District Court,* and asked said court to raise or lower the various assessments, and exercise the authority given by statute to the County Court in its administrative capacity, then this cause could not be properly transferred from the County Court to the United States District Court, since the jurisdiction of the United States Courts on removal is limited to such suits as might have been brought originally in said courts. The case referred to by the railroad, *Madisonville Traction Co. v. St. Bernard Mining Company*, 196 U. S. page 239, is not in contravention of the claim of the Road District on the question of jurisdiction, since such case only holds that an action for condemnation is such a suit that it may be transferred to the Federal Courts, and could have originally been brought in the Federal Courts. Under Section 1010 of the Act of January 20, 1914, the authority is granted for the removal of cases from a state to a U. S. District Court, the authority being the same as that granted by the Act of 1887, which restored the rule of 1789, the expressed intention of the act being, as stated in *Cochran v. Montgomery County*, 199 U. S. page 60, to restrict the jurisdiction of the Federal Court, and that this was accomplished largely by withholding the right of removal from state to Federal Courts. The court further held:

"Such cases were only liable to removal from a state to the Circuit Court as might, under the law, or in all events under the constitution, have been brought before the Circuit Court by original pro-

cess. * * * The Act of 1887 restored the rule of 1789, and as we have heretofore decided, those suits only can be removed of which the Circuit Courts are given original jurisdiction."

Cochran v. Montgomery County, 199 U. S. page 260.

It was also stated, *In Re Winn*:

"It is well settled that no case can be removed from the state court to the Circuit Court of the United States unless it could originally have been brought in the lower court."

213 U. S. page 458.

The same question was referred to as one well settled, and not needing argument, by Judge Rogers, as organ of the Circuit Court of Appeals of the Eighth Circuit, as follows:

"The jurisdiction of the United States Circuit Court on removal by the defendant from a state court is limited to such suits as might have originally been brought in the United States Circuit Court by the plaintiff in the first section of that act."

Wall v. Franz, 100 Fed. Rep. page 681.

This was a proceeding for the probate of a will in Arkansas, and the attempt was made to transfer the case to the Federal Court. Since the Probate Court and the County Court, under the section of the Arkansas Constitution, above quoted, have the same powers, this decision is peculiarly applicable as setting forth the duties and jurisdiction of the county and probate courts in Arkansas. As there stated by Judge Rogers, in referring to the question of jurisdiction:

"It must be remembered that the question is not whether Congress has the power under the constitution to confer jurisdiction upon Federal Courts, but the question is, has it been done, and the action of the courts from the foundation of the government down to the passage of the Act of 1888, could be accepted as an absolute denial thereof, and unless it can be shown that by the Act of 1888 the jurisdiction in respect to the subject-matter under consideration was acknowledged, the court should await further action upon the part of Congress before assuming jurisdiction of this new and novel class of cases heretofore confined in England to ecclesiastical courts, and to this country to statutory courts adopted especially for their hearing."

100 Fed. Rep. C. C. A. page 681.

A state constitution may delegate to its courts either judicial powers alone or judicial, administrative and legislative powers, and although cases may be transferred from state to Federal Courts where judicial power is brought into question, such transfer may not be had where the powers are either legislative or administrative.

The State Corporation Commission of Virginia, by the constitution of the state, was given a dignity and importance that added judicial to its other functions, and was for some purposes a court within the commonly accepted meaning of that word. However, when an attempt was made to transfer a proceeding from said Corporation Commission to the Federal Courts, this right was denied by the Supreme Court where the legislative functions were at issue.

"Proceedings legislative in nature are not proceedings in court within the meaning of the statute, no matter what may be the general or dominating character of the body in which they may take place. * * * That question depends, not upon the character of the body, but upon the character of the proceedings."

Citing decisions.

"And it does not matter what inquiries may have been made as a preliminary of the legislative act, most legislation is preceded by hearings and investigations, but the effect of the inquiry and of the decision upon which, is determined by the nature of the act to which the inquiry and decision led up. A judge sitting with a jury is not competent to decide issues of fact; but matters of fact that are merely premises to a rule of law he may decide. *Prentiss v. Atlanta Coast Line Co.*, 221 U. S. page 226, 53 L. E., page 159."

This decision squarely supports the Upshur case, heretofore cited, holding that causes other than judicial ones cannot be transferred to the Federal Court, and further holding that the same person or body of men may in certain instances be a court exercising judicial authority, and in other cases have purely administrative or legislative powers granted under the constitution and law of the state.

Hundreds of road districts have been organized under the Alexander law, the one here under consideration. The Legislature of Arkansas, during the year 1919, at its regular and special term, passed probably two hundred and fifty special road acts. If there exists the right to transfer each assessment of benefits amounting to more

than \$3,000 where the land owner is a non-resident, for decision from the County Court to the Federal Courts, then the wheels of justice may well be clogged with such administrative matters, and the courts unable to attend to their judiciary functions, if such transfers are to be allowed. Under the decisions above cited it is most earnestly contended that this cause could not have originally been brought in the United States District Court, and that such court is therefore without jurisdiction to consider same, and that this cause must be remanded to the County Court of Lafayette County, Arkansas.

The Supreme Court of the United States, in *Upshur County v. Rich*, 135 U. S. page 467, a case almost identically on all fours with the present one, uses the following language:

"But is an appeal from an assessment of property for taxation a suit within the meaning of the law? In ordinary cases it certainly is not. By the laws of all or most of the states, taxpayers are allowed to appeal from the assessment of their property by the assessor to some tribunal constituted for that purpose, sometimes called a Board of Commissioners of Appeal; sometimes one thing and sometimes another. But whatever called, it is not usually a court, nor is the proceeding a suit between parties; it is a matter of administration, and the duties of the tribunal are administrative and not judicial in the ordinary sense of that term, though often involving the exercise of *quasi* judicial functions. Such appeals are not embraced in the removal Act."

The courts of the United States follow the decisions of the courts of final resort in the several states in the matter of the construction of statutes, etc., of such states.

The Supreme Court of the State of Arkansas since the present case was decided in *M. & P. Ry. Co. v. Izard County Highway Imp. District* (S. W. Rep. Vol. 220 No. 3, May 26, 1920, p. 452), wherein the identical question as to whether or not such a proceeding as that involved in the present case before this Honorable Court, was a *suit* within the meaning of the law authorizing the removal of causes from a state court to a federal court, was at issue, held that an owner of land objecting to Road Improvement District Assessments, on hearing before the County Court was not entitled to a removal of the cause to the United States District Court under the Federal Statute; such hearing being held not to be a judicial proceeding within the jurisdiction of the County Court when exercising the strict judicial functions conferred upon it by the Constitution, and that assessments for local improvements by the Legislature or its duly appointed agents, the Commissioners and the County Courts are not in any sense judicial proceedings within the jurisdiction of the County Court when exercising the strictly judicial functions conferred upon it by the Constitution of the State of Arkansas.

The Arkansas Supreme Court in this case cites the case of *Upshur County v. Rich* (*supra*), which arose upon a statute of West Virginia, and says:

"The jurisdiction of the County Court under the Constitution of West Virginia, when the above decision was rendered was substantially the same as that conferred upon the County Court under our Constitution so far as Roads and the internal affairs of the county are involved. We conclude, therefore, that the assessment of the commissioners and the proceedings thereafter in the County Court were in no sense a suit in law or equity, within the purview of the Federal Judicial Code."

The Supreme Court of Arkansas in a very recently decided case (May 24, 1920), *Monette Road Imp. Dist. v. Dudley*, Circuit Judge, S. W. Reporter, Vol. 222, No. 1, page 59 affirmed its holding in *M. & P. Ry. Co. v. Heard County Highway Imp. Dist.* (*supra*).

The Monette Road Imp. Dist. was formed for the purpose of improving certain roads in Craighead County, and said district in this case made application to the Supreme Court of Arkansas for a writ of prohibition directed to the judge of the Circuit Court of Craighead County to prevent said Circuit Court from hearing and determining proceedings involving the validity of the acts of the Commissioners of said District in assessing certain benefits and in attempting to construct the improvement. In deciding the case the Supreme Court says:

"The real question in the case is whether or not the Circuit Court had jurisdiction to grant the relief sought in the complaint.

The functions of the Board of Assessors in assessing benefits, and the Board of Commissioners in adjusting them on complaint of the property

owners is not judicial in the ordinary sense, but, it is in the nature of a Legislative power.

Boards created as special tribunals for certain purposes may, and sometimes do, act in a judicial or quasi-judicial capacity, and when so acting their proceedings may be reviewed on certiorari, but in the matter now before us, the commissioners do not act in such capacity. (Citing various authorities including the Izard Company Highway Imp. Dist. Case) * * *

The writ of prohibition is therefore awarded in accordance with the prayer of the petitioner to prevent the Circuit Court from further proceeding in the matters under consideration."

In re City of Chicago, 64 Fed. Rep. p. 897, the Circuit Court for the Northern Div. of Ill., held that assessment proceedings for municipal improvement were an exercise of the taxing power, and an administrative act, and did not constitute a "suit" within the provisions for removal of suits to Federal Courts, though they are conducted under judicial forms by a court of general judicial powers.

This was a case where the City of Chicago moved to remand to the County Court of Cook County, a special assessment proceeding for putting in a sewer, which case had been removed to the Federal Court on petition. In a carefully considered opinion, the court, by Judge Seaman, following the decision of the United States Supreme Court in *Upshur County v. Rich* (*supra*), ordered that said remand be made.

We note that a decision upon the question, in such cases as this, as to what constitutes a *suit* within the pro-

visions for removal of suits to Federal Courts, depends very largely upon the language of the statutes of the state under consideration in each of such suits, and we respectfully submit that there is nothing in the cases referred to by the Circuit Court of Appeals as sustaining the ruling of the court below, that in any manner does away with the opinion of the Supreme Court of the United States in *Upshur County v. Rich*, 135 U. S., hereinbefore referred to. It is shown in the opinion in this case, rendered by Justice Bradley (for a unanimous court) that every decision of the U. S. Supreme Court referred to on this point by the Circuit Court of Appeals as sustaining the ruling of the court below (except 196 U. S. 239), was considered by the court in arriving at the opinion rendered; reference being made particularly to said cases by the court, and after considering same the court unanimously held that such a proceeding for an assessment of property for taxation is not a suit within the meaning of the law authorizing the removal of causes from a state to a federal court. All of said cases so referred to were decided prior to the decision in *Upshur County v. Rich*, except the case of *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239.

This last mentioned case arose under a Kentucky statute in a proceeding for the taking of land by eminent domain, and the question at issue under the Kentucky statute being construed, was the amount of damages which the owner of the land being condemned, was entitled to, and for which amount the statute provided for a judgment to be rendered, and this case cannot be re-

lied upon as conflicting with the opinion in *Upshur County v. Rich*, or as controlling in the present case where it is found that the Arkansas statute is in all "essential particulars for the purpose of this discussion" similar to the statute of West Virginia, construed by the Supreme Court of the United States, and held not to justify the removal of said proceedings to the Federal Court.

And so we beg to suggest that a reference to the various cases in federal reporters will show that the decisions therein depend upon the wording of the statutes and constitutions of the various states wherein these cases arose, and that no such decision referred to should be controlling so as to overturn the decision of the Supreme Court in *Upshur County v. Rich*.

The case of *Smith v. Douglass County*, 254 Fed. 244, was a proceeding in a matter of an assessment of inheritance taxes against real and personal property under a Nebraska statute, against the property of a decedent, which property was claimed by another, as surviving joint tenant, so that the proceeding was a contest *inter partes* between the two claimants and under the Nebraska Constitution, the court properly held that it was a suit within the removal statutes.

In re Jarnecke, 69 Fed. 161. It was held that under the Indiana statute prescribing proceedings for the establishment of drains and assessing the benefits and damages thereof, the cause was removable to the Federal Court. But an examination of the opinion shows that it was the particular nature of the proceedings under the

Indiana statutes that differentiates said case from the principle announced in *Upshur County v. Rich*; and the court in discussing said statute and the proceedings thereunder, says:

"The proceeding does not involve the mere exercise of the taxing power of the state. It is in the nature of the exercise of the power of eminent domain, and contemplates the taking of land whereon to construct the drain, as, well as the assessments of benefits on the remaining lands, whereby to pay for its establishment and construction. In this particular it differs from a proceeding solely for the purpose of raising money by the exercise of the taxing power to aid in the construction of a public improvement. This differentiates the present case from that of *In re City of Chicago*, 64 Fed. 897, and other cases of like character, which holds that a proceeding solely for the purpose of raising money by the exercise of the taxing power for the construction of a public improvement is not a suit, although such proceedings may be conducted in a court of general jurisdiction."

The case of *In re Stutsman County*, 88 Fed. 337, was a proceeding for the collection of delinquent taxes provided for by the laws of North Dakota. The District Judge (Amidon), in his opinion recognizes the binding force of the opinion in *Upshur County v. Rich*, (*supra*), and shows that under the terms defined by the Supreme Court of the United States the proceeding under consideration has every element of a suit. And the court shows that "it has been expressly held by the Supreme Court of Minnesota, (from the statute of which, the North Dakota law was taken) and North Dakota, that

the proceedings under this statute is a *suit*, and the same conclusive force is given to a judgment entered therein as to judgments and decrees in actions at law and suits in equity."

The case of *Terre Haute v. Railkay*, 106 Fed. 545, was remanded to the state court on account of want of the requisite diversity of citizenship, but for which the cause might have been removed. In holding that but for the lack of diverse citizenship, the cause might have been removed, the court held this upon a construction of the Indiana statute providing for the appropriating of real estate for the opening of streets, in which it is set forth that the questions of benefits or damages are "issues of law and fact" that "may be formed, tried, and determined as in other actions at law."

There is nothing in the case to sustain the removal of the cause at present under consideration by this Honorable Court.

In the case of *Drainage District No. 19 v. Ry. Company*, 198 Fed. 253, the decision of the District Court for the Western District of Missouri overruling the motion to remand to the state court, is based upon the wording of the constitution and statutes of the State of Missouri. The court holding that the proceedings were a suit in the county court vested by Art. 6, paragraphs 1 and 36 of the Missouri Constitution with judicial powers and we submit that there is nothing whatever in said opinion to uphold the order of removal in the cause under consideration. The court in the commencement of its

opinion notes that similar questions in the Federal Courts have been variously decided according to the facts and the local laws specifically involved, and says: "This case must be determined upon its own facts and the special statute under which it arises."

In the case, *In re Mississippi Power Company*, 241 Fed. 194, decided by the District Court of Iowa, next referred to by the Circuit Court of Appeals, the motion to remand was overruled, but here again the order of the Federal District Court was made after the cause had by appeal, provided for in the statute, reached the District Court of the State, and it is clearly shown in the opinion that the removal could not have been made simply upon the assessment proceedings. The following is a quotation from the District Judge's opinion:

"(1) Of course, the assessment and levy of taxes is legislative in its character, or, as it is sometimes expressed, it is administrative; but it is an exercise of the legislative power.

The legislature has the power to designate the tribunal which shall make assessments upon property. It may confer this power upon a judicial or a non-judicial body, and the owner of property assessed, cannot claim that he has been deprived of, 'due process of law,' because the legislature does not permit him to have a hearing in court. So that the Legislature of Iowa had the power to prescribe a method of assessment, and levy and collection, of taxes, without providing for any hearing before any court.

(2) It is the contention of appellant that by the appeal provided for, the District Court of the state is simply made part of the 'machinery' by

which, and through which the taxing power of the state is exercised. It is insisted that the action of the court in reviewing upon appeal, the action of the board of review is administrative rather than judicial. If this be true, then this proceeding is not a suit within the Removal Act.

But at the outset, we are confronted with the fact that the District Court of Iowa is a constitutional court, possessed of no administrative powers or functions, and the Supreme Court of Iowa has specifically held that non-judicial powers cannot be conferred upon the District Court by the Legislature."

In the case of *C. M. & St. Paul Ry. Co. v. District No. 8*, 253 Fed. 491, the remaining case referred to by the Circuit Court of Appeals in support of the refusal to remand the case at bar, the same District Judge rendered the opinion as in the next preceding case hereinabove cited, and it appears that this case had been passed upon by the district judge (Wade, J.) prior to the submission of the case *In re Mississippi Power Co. (supra)*, and Judge Wade had sustained the motion to remand to the State Court.

In a supplemental opinion rendered after a decision made in the Mississippi Power Company case, Judge Wade upon a further study having been made of the Iowa Statutes, overruled his order to remand and held that under the Iowa Statutes the case was removable; but in this opinion there is nothing to sustain a refusal to remand the case at bar. In speaking of the Iowa Statutes under consideration and the railway company as a party to the suit, the court says:

"It proceeds in the only way authorized by the Legislature. There was no *suit* possible until it had perfected its appeal, but instantly the appeal was perfected there was a *suit*, and in the spirit of the law I believe that it ought to have and I believe that it has the right to remove the case for trial."

In *City of Toccoa v. Marchbanks*, 261 Fed. 684, in a condemnation proceeding under the Civ. Code of Georgia, the District Court N. D. Georgia, held upon a construction of the Georgia Statutes giving the right of appeal to the Superior Court of the County, the City of Toccoa had the right to transfer the cause to the Federal Court, but held further that, in accordance with the Georgia Statutes, the time for filing a petition for removal was limited to the 10 days allowed for entering appeal, which 10 days having expired, said cause was remanded, showing how closely the state statutes are followed in deciding questions of this character.

In *M. P. Ry. Co. v. Izard County Highway Improvement District*, *supra*, the Supreme Court of Arkansas held an assessment of benefits is not a "suit," and that the decisions of the County Court are administrative and not judicial. Said case is on all fours with the present one, and since the Federal courts will follow the decisions of the court of last resort of a state in construing its own constitution and statutes, this case should be remanded to the LaFayette County Court, as the United States Courts are without jurisdiction.

To sustain the second ground alleged in the petition for writ of certiorari, to-wit: That the Circuit Court of

Appeals erred in holding that it had no jurisdiction to review the action of the Trial Court, though it had found that the Trial Court had committed error in saying there was no disputed question of fact in the case, and in withdrawing the issues from the consideration of the jury, we beg to refer the court to Section 1246 (Jud. Code, Section 269, as amended, Act Feb. 26, 1919, c. 48), reading as follows:

"New Trials.—All of the said courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law.

On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the rights of the parties (40 Stat. 1181)" (1919 Supplement to U. S. Compiled Statutes, Annotated, West Publishing Co. p. 273).

We respectfully submit that the statute just quoted was made to meet and remedy just such a situation as confronts the court in this cause. It is true that no exceptions were saved to the action of the court in withdrawing this case from the jury, but certainly this failure is covered and cured by the express provisions of the statute quoted. This statute was intended by Congress to be remedial and to obviate all technical errors to the end that every case might be decided upon its merits without regard to such technical errors, defects, or failure to accept, unless such failure materially affected the

rights of the other party. Certainly the rights of the other party can be preserved and will not be injuriously affected by the court considering this case upon its merits, and since both parties to the action appealed from the judgment of the lower court, we respectfully submit that this court should now, in view of the statute quoted, reverse the case so same may be decided upon its merits.

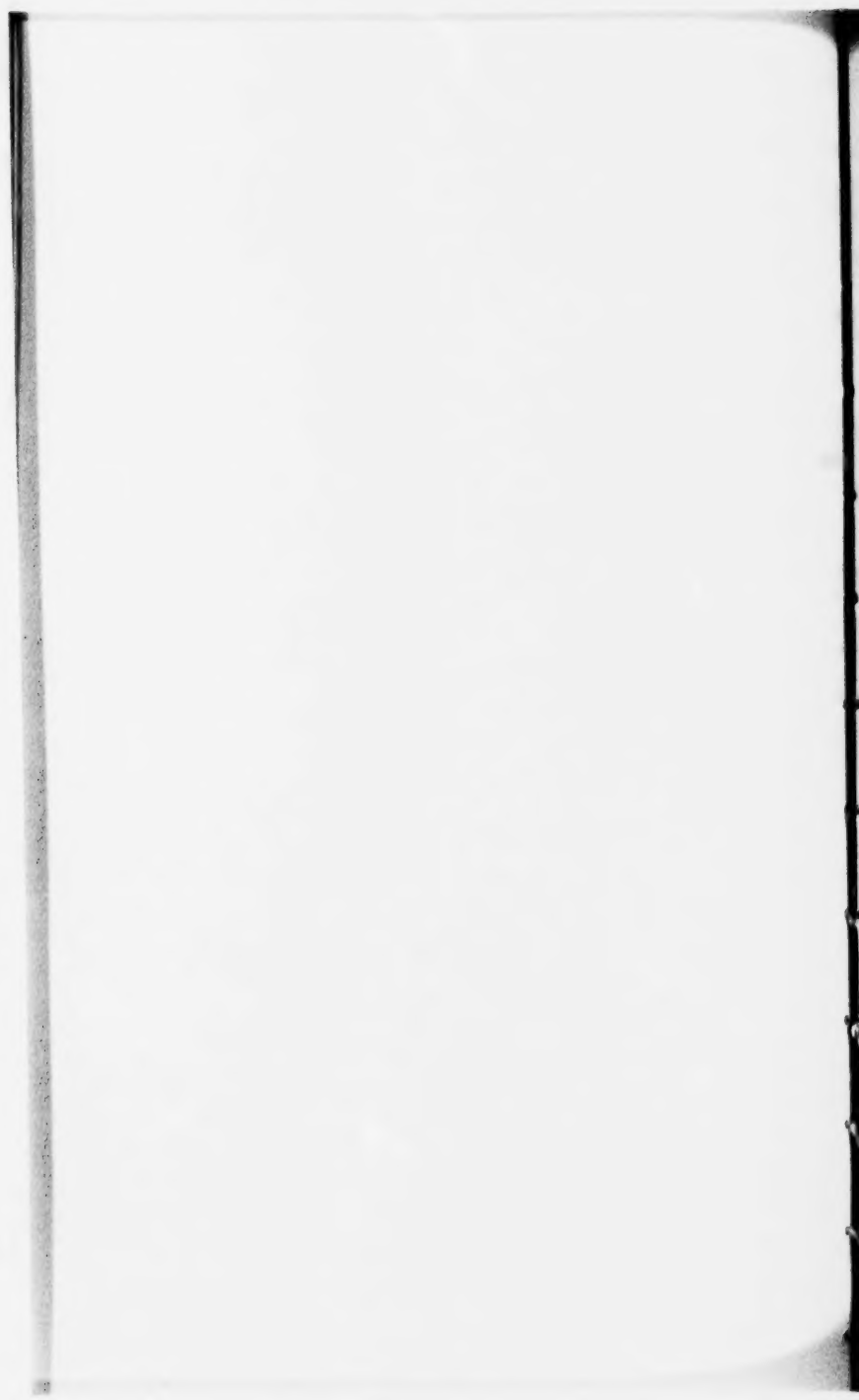
For the reasons as above set forth and under the decisions cited this case should be ordered remanded to the County Court of LaFayette County, Arkansas, as the Federal Courts are without jurisdiction.

The Circuit Court also erred in not granting a new trial in accordance with Section 1246 of the Federal Code quoted above.

Respectfully submitted.

COMMISSIONERS ROAD IMPROVEMENT DISTRICT No. 2. LAFAYETTE COUNTY, ARKANSAS.

By HENRY MOORE, JR. *Attorney.*



No. **141**

Office Supreme Court, U.S.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1920.

On Writ of Certiorari to the United States
Circuit Court of Appeals, Eighth Circuit,
in Nos. 5454 and 5470.

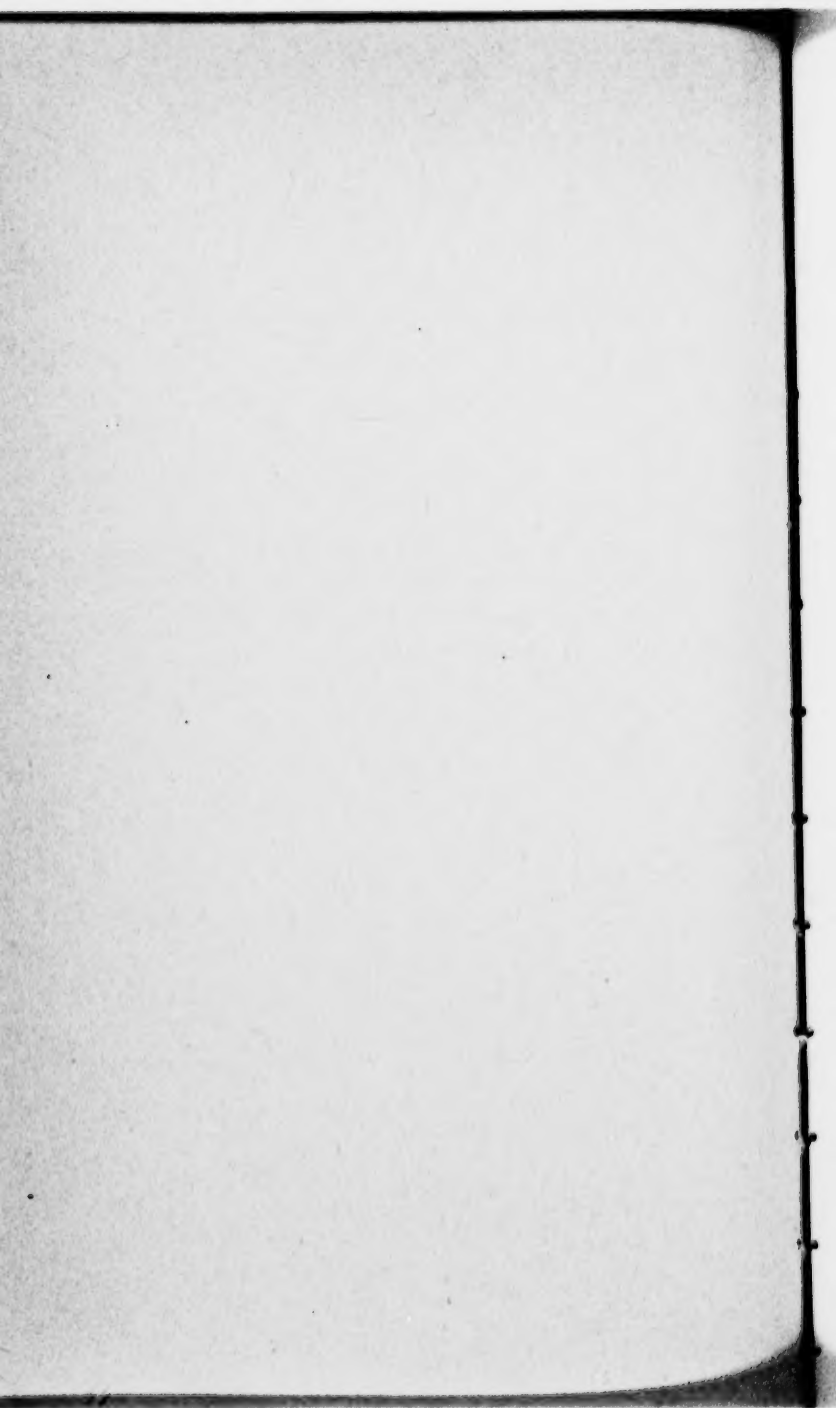
COMMISSIONERS OF ROAD IMPROVEMENT
DISTRICT No. 2 OF LAFAYETTE COUNTY,
ARKANSAS, PLAINTIFF IN ERROR,

VS.

ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, DEFENDANT IN ERROR.

**ABSTRACT AND BRIEF FOR PLAINTIFF
IN ERROR.**

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Improvement District No. 2 of
Lafayette County, Arkansas.*



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No. 552.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1920.

On Writ of Certiorari to the United States
Circuit Court of Appeals, Eighth Circuit,
in Nos. 5454 and 5470.

COMMISSIONERS OF ROAD IMPROVEMENT
DISTRICT No. 2 OF LAFAYETTE COUNTY,
ARKANSAS, PLAINTIFF IN ERROR.

VS.

ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, DEFENDANT IN ERROR.

**ABSTRACT AND BRIEF FOR PLAINTIFF
IN ERROR.**

No. 5454.

St. Louis Southwestern Railway Company,
Plaintiff in Error,

vs.

Commissioners of Road Improvement District
No. 2 of Lafayette County, Arkansas,
Defendant in Error.

In error to the District Court of the United States
for the Western District of Arkansas.

No. 5470.

Commissioners of Road Improvement District
No. 2 of Lafayette County, Arkansas,
Plaintiff in Error,

vs.

St. Louis Southwestern Railway Company,
Defendant in Error.

In error to the District Court of the United States
for the Western District of Arkansas.

STATEMENT OF THE CASE.

I. Road Improvement District No. 2 of Lafayette County, Arkansas, hereinafter called the Road District, was formed under the so-called Alexander Act, Act No. 338, passed by the General Assembly of the State of Arkansas during the year 1915. No question is raised as to the validity and legality of the District. In accordance with Section 11 of said Act, the Commissioners appointed to assess benefits accruing from building the road, assessed the respective benefits against the country lands, against the town lots in the Towns of Lewisville, Stamps and Buckner, and against the railroad tracks of the St. Louis Southwestern Railway Company, the party to this action, and also against the Louisiana and Arkansas Railway Company, being the two railroads running through the Road District. As required by said Section 11, the assessments of benefits against the railroad were made at so many dollars per mile of track. The main line of the St. Louis Southwestern Railway Company, hereinafter called the Cotton Belt Railroad runs East and West through the District approximately parallel to the road, and the Shreveport Branch of the Cotton Belt runs South from the road, being almost at right angles to same. The Louisiana and Arkansas Railway Company runs North and South crossing the road at right angles. The total assessed valuation of all the property within the

Road Improvement District is \$1,443,000.25. The total assessed benefit for road purposes is \$320,825.25. The assessed valuation of the Cotton Belt Railroad within the District is \$581,960.00 and the assessment of benefits for road purposes against said Cotton Belt Railroad is \$49,606.50. Within the District are 16.94 miles of main line (that running East and West), and 9.21 miles of side track; also 3.5 miles of main line of the Shreveport Branch. The main line of the Cotton Belt is assessed for state and county purposes at \$28,500.00 per mile, and the benefits against same at \$2,000.00 per mile. The side track is assessed at \$3,000.00 per mile for state and county purposes, and benefits against same at \$1,000.00 per mile. The Shreveport Branch is assessed for state and county purposes at \$18,000.00 per mile, and the benefits against same at \$1,500.00 per mile (Tr. pages 218-54). The portion of the Louisiana and Arkansas Railway Company within the Improvement District is assessed for state and county purposes at \$119,350.00, and the benefits against same for the Road District is \$20,080.00. The assessment per mile against the Louisiana and Arkansas Railway Company for the state and county purposes is \$12,000.00, and the benefits for road purposes \$1,500.00 per mile. The assessments against the side track of the said railway company is \$2,500.00 per mile, and the benefits for road purposes \$1,000.00 per mile. The assessed value of the incorporated Towns of Lewisville, Stamps and Buckner for state and county purposes is \$383,270.00, and the assessed benefits for the road 15 per cent thereof, \$57,490.50.

490.00. The approximate acreage of country property not including that within the Towns of Lewisville, Stamps and Buckner, is 69,000 acres, and the assessed value of said lands for state and county purposes \$364,080.25, and the assessed benefits against the lands for road purposes is \$212,103.00 (Tr. page 192).

II. The lands were divided into zones according to their proximity to the improved roads; the lands in the one-mile zone being assessed a benefit for road purposes of \$4.00 per acre; within the two-mile zone of \$3.00 per acre; and within the three-mile zone \$2.00 per acre. A small acreage lying more than three miles from the road, but within the Improvement District was assessed a benefit of \$1.00 per acre. In making such assessment of benefits of country property no consideration was given the improvements on the land or the assessed value of the land, whether improved or unimproved, within the respective zones. The assessors stating that in their opinion all of the lands within the respective zones would receive approximately an equal benefit from building of the road, or if any lands received a greater benefit than the other, the wild land, which would be improved and brought on the market because of the road, would receive a greater benefit than the unimproved.

III. The urban property being in town lots or very small acreage, but of a different character from farm property, could not be assessed on an acreage basis, and the benefits accruing to the towns, being of an entirely different character from that to the country lands.

the assessors took the valuation on the tax books for state and county purposes, and assessed a flat benefit for road purposes of 15 per cent thereof.

IV. The railroad property, being of still a third character different in its use and kind from either the country property or the city property, was classified separately and assessed as required by Section 11 of the above mentioned Act 338, at a benefit of so many dollars per mile. As noted from the assessments for state and county purposes the main line of the Cotton Belt is two and one-half times as valuable as the main line of the Louisiana and Arkansas Railway Company, and the Shreveport Branch of the Cotton Belt fifty per cent more valuable than that of the said Louisiana and Arkansas Railway Company. The assessors, however, not taking into consideration the value of the roads, but the benefits accruing, placed a benefit of \$2000.00 per mile against the trunk line of the Cotton Belt, and a benefit of \$1500.00 per mile each against the Louisiana and Arkansas Railway Company and the Shreveport Branch of the Cotton Belt. Against the side tracks of the two roads an equal benefit of \$1000.00 per mile was placed. The Louisiana and Arkansas Railway Company accepted the benefit assessment against same as just and made no appeal therefrom. No other owner of property within the Road Improvement District has protested against or appealed from the assessment of benefits made for road purposes.

V. On the day set for the hearing before the County Court for any protests that might be made

against the benefit assessment for road purposes by parties desiring to appeal from the Board of Commissioners to the County Court, which under Section 13 of said Alexander Act sits as a Board of Review from the decision of the Commissioners, the Cotton Belt Railroad filed its petition for removal to the U. S. District Court for the Western District of Arkansas, alleging that this is a controversy in a suit of a special nature pending before a court of competent judicial authority, and that the amount in controversy exceeds the sum of \$3000.00, and that the parties thereto are citizens, one of the State of Missouri and the other of the State of Arkansas (Tr. page 43).

Motion was filed by the Road District to remand the cause to the Lafayette County Court, alleging that the U. S. District Court is without jurisdiction to try the matter at controversy in that the proceeding before the County Court is an administrative proceeding, and therefore not cognizable by the Federal Court; and the proceedings of this special assessment do not constitute a suit within the meaning of the Federal judiciary laws, but the County Court is authorized under the so-called Alexander Act (the Road Improvement District Act of the State of Arkansas), to act as a Board of Review in adjusting the amounts of benefits placed by the assessors against the various lands, town lots and railroad tracks within the Road Improvement District; and in so acting exercises the powers of a Board of Review of Assessors --and does not exercise the powers of a court granted

to the County Courts under the Constitution and laws of the State of Arkansas (Tr. page 50).

After due consideration the motion to remand on behalf of the Road District was by the court overruled, and exceptions to such action on the part of the court duly saved (Tr. page 51).

Out of an abundance of caution in order to preserve this question of jurisdiction a certificate showing that the question of jurisdiction had been raised and a motion to remand filed by the Road District on the ground that this is not a suit within the meaning of the removal statutes, as no appeal is contemplated or allowed by law in a proceeding of this kind, from the County Court of Lafayette County, acting as a Board of Supervisors, to the said U. S. District Court, was presented to the trial judge, who declined to sign same, making a notation on said certificate as follows:

"The foregoing is presented to the trial judge, and he declined to sign same this the 25th day of June, 1919. Signed Frank A. Youmans." (Tr. pages 237 and 238.)

VI. A demurrer was filed to the exceptions of the Railway Company by the Road District, and afterwards when amended exceptions were filed on behalf of the Railway Company (Tr. 51 to 54), said demurrer was re-propounded to the amended exceptions (Tr. 54). Said demurrer was by the court overruled and exceptions there-to duly saved by the Road District (Tr. 57).

VII. The Road District then filed its reply, alleging that the railroad track within the limits of the road dis-

trict would be of no value severed from the remaining track running through the States of Texas, Louisiana, Arkansas and Missouri, but that the railroad must be considered as a unit or whole, alleging that great benefit would be received by the railroad company because of the increase in traffic due to the building of the improved gravel road, alleging that the benefit had been assessed against the railroad track and against the buildings without taking into consideration the franchise of the railroad company in making such assessment, and asserting that the railway company is a different sort, kind and character of property from the city property or country lands, and must therefore be assessed by the mile, as it is impracticable to assess same on an acreage or valuation basis (Tr. pages 54-56).

On the 19th day of May, 1919, the above suit came on for trial before the Honorable Frank A. Youmans, Judge for the Western District of Arkansas, who on or about said 19th day of May, 1919, on his own motion, after the introduction of evidence withdrew the cause from the consideration of the jury, and filed his decision to the following effect: He found that the assessment of benefits against the property of the defendant railway company in the country, being that outside of the corporate Towns of Buckner, Stamps and Lewisville should be assessed on an acreage basis, the same as lands within said zone were assessed, to-wit: \$4.00 per acre, and the amount of acreage in each mile, the right-of-way being 100 feet in width, being slightly in excess of 12 acres per mile, the court found a total benefit per mile

against the Railway Company of \$54.00. The total benefit for all of the railroad track outside of said towns as found by the court to be \$885.48 (Tr. page 60). To this action of the court the Road District excepted because the kind, character and use of the property was not taken into consideration in making said finding and assessment by the court.

The court further found that the assessment of benefits against the track of the railway company within the corporate limits of the Towns of Lewisville, Stamps and Buckner should be at the same percentage of the actual value of said property including the rail, ties, dump, and all improvements on said property as the assessment of benefits against town lots within said Towns of Lewisville, Stamps and Buckner, and used said basis. After agreement of counsel had been had as to such value, making due deduction so the franchise of the company would not be taken into consideration, the court found a benefit against each mile of railroad within the corporate limits of said towns of \$2400.00 per mile, or a total benefit of \$9600.00; to said finding and holding of the court the railroad company objected. The total benefit found by the court against all of the track of the Railroad Company within said District was \$10,485.48, and to this finding as to the total benefit, both the railroad company and the Road District excepted. The same railroad track being assessed a benefit of \$54.00 per mile when in the country and a benefit of \$2400.00 per mile when it crosses the corporate limits of the Towns of Lewisville, Stamps and Buckner.

On or about the 25th day of June, 1919, your petitioners were duly allowed by the said Honorable Frank A. Youmans, District Judge for the Western Division of Arkansas, an appeal from his said decree to the United States Circuit Court of Appeals for the Eighth Circuit, and it was ordered that a certified transcript of the record and all proceedings in said case be forthwith transmitted to the said United States Circuit Court of Appeals.

A certified transcript of the record and of all proceedings in the case was duly transmitted to the said United States Circuit Court of Appeals, and on or about the 7th day of January, 1920, an appeal by your petitioners asking that said decree be reversed came on to be heard, and together with the cross-appeal by the respondent was argued by counsel for all parties before Judges Sandlin, Garland and Van Valkenburgh, and thereafter and on the 29th day of April, 1920, said United States Circuit Court of Appeals rendered and filed an opinion and decision written by Judge Garland, which among other things, held that the assessment of benefits by the County Court of Lafayette County, Arkansas, was in fact a suit at law, and not a mere fixing of the value of property for the purpose of taxation, and sustained the decision of the District Court holding that it had jurisdiction in said cause. Said court held that the District Court was mistaken when it said there was no disputed question of fact in the case, but held since neither of the parties, or their attorneys of record, filed a stipulation with the clerk waiving a jury, and

since no objection was made to the action of the court in withdrawing the case from the jury, that the mistake of the court in holding there was no disputed question of fact could not be corrected. Said opinion and decision affirmed said decree of said District Court.

VIII. The questions of law involved in this case are substantially as follows:

1st. Did the District Court for the Western District of Arkansas have jurisdiction to hear this case, and did the said District Court err in not remanding said cause to the County Court of Lafayette County, Arkansas, as this proceeding is not a "suit" within the meaning of the removal statute, over the objections and exceptions of the Commissioners of Road Improvement District No. 2 made at the time that said motion to remand was overruled? Did the United States Circuit Court of Appeals commit error in sustaining the jurisdiction assumed by said District Court?

2nd. Did the United States Circuit Court of Appeals commit error in not reversing the cause for a trial upon its merits after finding that the District Court was mistaken and erred in withdrawing said cause from the jury on its own motion, and in holding there was no disputed question of fact in the case?

All of said questions were duly raised and argued by your petitioners in the said District Court and in said Circuit Court of Appeals, and in said Circuit Court of Appeals a petition for rehearing was presented rais-

ing the questions above, which petition for rehearing was overruled by said Circuit Court of Appeals.

Concerning the question of jurisdiction, Judge Garland said in his opinion, which is reported in Volume 265 of the Federal Reporter, at page 527:

"We are of the opinion that a proceeding which might result in a judgment against the defendant for the payment of money is a suit at law, and the assessment of benefits in such a proceeding is an assessment in the same way that a jury assesses damages in a civil action at law upon a breach of contract or any other contested liability, and not a mere fixing of the value of property for the purpose of taxation."

On the question as to the error of the court in withdrawing the case from the jury, said judge held:

"In the case at bar neither the parties, nor their attorneys of record filed a stipulation in writing with the clerk waiving a jury, but the court of its own motion withdrew the case from the jury, and each party without objection to such action of the court presented findings of fact and conclusions of law to the court for its approval. The case, therefore, stands as a civil case at law, tried by the court without any waiver of the jury, as the law provides. Where this is so and the facts are not admitted in a case stated, we have no jurisdiction to review any question on a writ of error, except those which arise in the process, pleading or judgment, and no such question appears. In order that our decision on this question may not be misunderstood, we remark that the trial of the court was mistaken when it said there was no disputed question of fact in the case."

IX. In the case of *Upshur County v. Reisch*, 135 U. S., page 467, the Supreme Court in considering a similar case transferred from the County Court of West Virginia, held:

"Is an appeal from an assessment of property for taxation a suit within the meaning of the law? In ordinary cases it certainly is not. By the laws of all or most of the states, taxpayers are allowed to appeal from the assessment of their property by the assessor to some tribunal constituted for that purpose, sometimes called a board of assessors, or appeal, or whatever called, it is not usually a court, nor is the proceeding a suit between the parties. It is a matter of administration and the duties of the tribunal are administrative and not judicial in the ordinary sense of the term, though often involving the exercise of *quasi* judicial function. Such appeals are not embraced in the Removal Act. It is true that the tribunal or appeal is called the county court, but it has no judicial powers except in matters of probate; in all other matters it is an administrative board, charged with the management of county affairs."

"The original assessment made by the county assessors could not be called a suit, and could not be removed, and there is justly no more reason for placing an assessment on appeal within that category, and it is nothing but an assessment; in either case, it is an administrative act; the fact that the board of appeal may swear witnesses, does not make the proceeding a suit." *Upshur Co. v. Reisch*, 135 U. S. p. 467.

In the case of *M. P. Railway Company v. Izard-County Highway Improvement District*, Arkansas Reporter, Volume 143, page 267, the Supreme Court of the

State of Arkansas, where the identical question at issue was presented held that the action of the county court in reviewing and confirming benefits assessed against land within the Road Improvement District was not a judicial but an administrative function, and after citing the case above quoted of *Upshur County v. Reich*, held that such assessment was not a "suit" within the meaning of the law authorizing the removal of cases from a state to a federal court.

"Appellant contends that under the above section the cause should have been removed to the Federal Court. This contention can not be sustained for the reason that assessments for local improvements by the Legislature or its duly appointed agents—the commissioners and the county courts—are not in any sense judicial proceedings within the jurisdiction of the county court, when exercising the strictly judicial functions conferred upon it by the Constitution. The assessment for local improvements is not a tax in the ordinary sense of that term as used in the Constitution and in statutes generally. *Cribbs v. Benedict*, 64 Ark. 555-62; *Paving District of Fort Smith v. Sisters of Mercy*, 86 Ark. 109. Nevertheless, assessment for local improvements is a function of the state's sovereign power more nearly akin to that of taxation than any other and is referable to that power. *Ahern v. Board of Imp. Dist. No. 3 of Texarkana*, 69 Ark. 68-75; *Carson v. St. Francis Levee Dist.*, 59 Ark. 513-31. The power is purely legislative, not judicial." * * *

"The duties which this statute devolves upon the county court, as already stated, are administrative and not judicial, although the line of demarcation is very close."

In a later case, *Monette Road Improvement District v. Dudley*, S. W. Reporter, Volume 222, page 59, the Supreme Court of Arkansas affirmed the decision above.

Your petitioners aver that this cause should be remanded to the County Court of LaFayette County, as the Circuit Court of Appeals for the Eighth Circuit Court has declined to follow the decision of this court as set forth in *Upshur County v. Reisch*, and also has failed to follow the decision of the Supreme Court of the State of Arkansas in *M. P. Railway Co. v. Izard Co. Highway District*, a case where a Federal question is not involved, and where the Constitution and statutes of the State of Arkansas have been construed by the highest court of said State.

N. The Circuit Court of Appeals failed to take into consideration Section 1246, as follows:

"New Trials. All of the said courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law.

On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions, which do not affect the rights of the parties (40 Stat. 1181)" (1919 Supplement to U. S. Compiled Statutes, Annotated, West Publishing Co., p. 273).

SPECIFICATION OF ERRORS.

1st. The United States District Court and the Circuit Court of Appeals for the Eighth Circuit were without jurisdiction to hear this case, and the motion on behalf of the petitioner to remand this cause to the County Court of LaFayette County, Arkansas, should have been granted, as said case is not a suit within the meaning of the Federal Statutes.

2nd. Because the Circuit Court of Appeals failed to take into consideration Section 1246 of the Revised Statutes, and failed to grant a new trial after deciding that the United States District Judge was in error in holding that there was no question of fact involved, when in accordance with said section this cause should have been remanded for a trial of said questions of fact by the jury.

BRIEF OF THE ARGUMENT FOR PLAINTIFF IN ERROR.

Under Section 11 of Act 338 of the Acts of Arkansas, for the year 1915, the road law called the Alexander law, the assessors appointed to assess the benefits shall inscribe in a book in appropriate columns the name of the owner of the property, the assessed value and assessed benefits, assessing the railroad benefits by the mile. Under Section 12, said assessors shall assess in said book the damages, if any, accruing to the real property. Then follow Sections 13 and 14, being the sections of the Act under consideration in this cause, same being quoted below, to-wit:

"Section 13. As soon as the assessors have completed the work of assessment for the district, they shall certify to same and deliver it to the board of commissioners. The commissioners shall immediately file same in the office of the county clerk, and the county clerk of said county shall give public notice by two consecutive insertions in a publication having a general circulation in said county. Said notice shall give a description of all lands embraced in said district in the largest subdivision practicable and shall state that said assessment of benefits and damages has been filed in said office and shall call upon any person, firm or corporation aggrieved by reason of any assessment to appear before the County Court on some date to be fixed by the court, not less than five days after the last insertion therein, for the purpose of having any errors adjusted, or any wrongful or grievous as-

assessment corrected, and all grievances or objections to said assessment shall be presented to said court in writing. Any person who is damaged by reason of said improvement may appear before said court at the same time, for the purpose of having the assessment of damages adjusted.

The County Court shall hear and determine the justness of any assessment of benefits, or damages, and is hereby authorized to equalize, lower or raise any assessment upon a proper showing to the court.

Section 14. At the hearing provided for in the preceding section, and after the County Court shall have considered the assessment of benefits, it shall enter its findings thereon, either confirming the assessment of benefits against said property, increasing or diminishing same, and the order made by the County Court shall have all the force and effect of a judgment against any real property in said district, and it shall be deemed final, conclusive, binding and incontestible except by direct attack on appeal.

Any owner of real property within the district may appeal from the judgment fixing the assessment of benefits or damages within ten days by filing an affidavit for appeal and stating therein the special matter appealed from, but such appeal shall affect only the particular tract of land or other real property concerning which said appeal is taken, and on appeal only the special matters set up in said affidavit shall be considered by the Circuit Court.

If no appeal is taken within that time, judgment shall be deemed final, conclusive and binding upon all real property in the district, and the owners thereof, and said assessment of benefits shall not be subject to collateral attack.

The board of commissioners on behalf of the district or any owner of real property therein, may likewise appeal from any order of the County Court

refusing to enter such judgment, and said County Court may be compelled by mandamus to enter such judgment."

This proceeding is not a suit within the meaning of the Federal Removal Acts. The County Court, in passing upon the benefits received from the building of the road under the sections above quoted, was acting in an administrative and not a judicial capacity. Said County Court, occupying the position and having the same authority as that of the Board of Supervisors under the Constitution of Arkansas, of 1868.

The authority and jurisdiction of the County Courts is derived from Section 28 of Article 7 of the Constitution of the State of Arkansas.

"County Courts shall have exclusive original *jurisdiction* in all matters relating to county taxes, roads, bridges, ferries, paupers, bastardy, vagrants, and the apprenticeship of minors, the disbursement of money for county purposes and in every other case that may be necessary to the internal improvements and local concerns of the respective counties."

Under Section 23 of the Schedule of the Constitution of the State of Arkansas,

"The county courts provided for in this constitution shall be regarded in law as a continuance of the Board of Supervisors now existing by law."

Said Board of Supervisors, the predecessors of the County Court, received their authority from the Legislature under Section 1 of Article 7 of the Constitution of Arkansas of 1868, being as follows:

"The judicial power of the state shall be vested in the Senate, sitting as a court of impeachment, and the Supreme Court, Circuit Courts, and such other courts inferior to the Supreme Court as the General Assembly may from time to time establish."

Since the decision of this cause by the district court, the Arkansas Supreme Court has definitely decided, in *Horne v. Baker*, 140 Ark. p. 172, that in approving the plans and in determining finally the benefits received from the building of the road, the County Court is acting in its administrative rather than its judicial capacity. Said decision is to the effect that an appeal may be taken to the Circuit Court from such administrative decisions, but it is definitely and finally settled there that such decisions as the one at issue in the present cause are administrative. Said decision also refers to Schedule 23 of the Constitution of 1874, where the county courts were made successors and a mere continuance of the former board of supervisors of the counties, and thus given exclusive, original control over internal improvements within their counties.

"There is nothing in the act referred to, however, which indicates that the County Court was to act in this instance in any manner other than as it ordinarily acts in the disposition of administrative matters over which it is given jurisdiction by the constitution. * * * The statute probably did not contemplate the allowance of an appeal in this class of cases, for the legislation is borrowed from states where acts prescribed to be performed by the County Court are administrative purely, and where no appeal is allowed, but the right to appeal has been found elsewhere, and is established by the

decisions of this court. * * * Under authority of Section 33, Art. 7, of the Constitution of the State of Arkansas, appeals have been uniformly granted as a matter of constitutional right from all judgments of the County Court, and no distinction has been made between administrative matters and judicial causes." *Horne v. Baker, supra.*

From the above, it is clearly established that the County Court in performing the duties prescribed by the sections of the constitution above cited, acted under the authority of the legislature, as a board of review, and not in its judicial capacity. This identical question came before the United States District Court in Chicago, and said court held that the County Court, under authority granted by the legislature, was acting in a legislative or administrative capacity, and therefore the action was not a *suit* within the meaning of the Federal Removal Act, and the Federal Court was without jurisdiction.

In Re City of Chicago, 64 Fed. page 897.

In two later cases the above mentioned decision was referred to and upheld. However, the cases were not remanded, since under the specific authority of the constitution creating the County Court in one instance, and under the decisions of the Supreme Court of the state in the other instance, the county courts could not act in any other than judicial capacity.

C. M. & St. P. Ry. Co., 198 Fed. page 253.

In Re Mississippi Power Co., 241 Fed. page 194.

There is also the recent case of *Smith v. Douglas County, Nebraska*, 254 Fed. page 246, decided by the

Court of Appeals of the Eighth Circuit, and on which decision the opinion of the District Court seems to have been based. Attention is called, however, to the fact that the County Court was given authority to determine all questions in relation to taxes, not being confined, as in the present case, to merely determining the amount of such taxes or benefits. Further, as in the cases above cited, the county courts in Nebraska, under the constitution, are given certain original jurisdiction and such other jurisdiction as may be given by statute (see page 246, 254 Fed. Rep.).

This clearly differentiates said decision, and the decisions in other states having only judicial authority from the present cause arising under the laws and Constitution of Arkansas, where the County Court exercises both judicial and administrative powers. The assessment of benefits in the instant case is a local assessment and not a tax in the sense in which these words are used in the Constitution of Arkansas, and since the County Court, as a court under the constitution, has no authority over local assessment or over taxes, save county taxes, the legislature could not give the court jurisdiction in a judicial capacity to determine the amount of benefits received by lands within the road district.

"The local assessment necessary for the proper execution of the act (creating a ditch improvement district) in any given locality, are not taxation in the sense in which that term is used in Section 2, Art. 23 of the Constitution, as has been often held by this court." *Cribbs v. Benedict*, 64 Ark. p. 562.

In the Missouri case, strongly relied upon by the railway company, under Section 36 of Art. 6 of the Missouri Constitution, the County Court has jurisdiction to transact all county business, and all other business such as may be prescribed by law. Said County Court of Missouri, therefore, can only act in a judicial capacity, having no authority as an administrative body, as is the case in Arkansas. 191 Fed. page 259.

In the Iowa case, relied upon, under the decision of the Supreme Court of Iowa, only judicial functions may be exercised by the County Court.

"but powers that are not to be exercised in the discharge of the functions of the judicial department cannot be conferred on the courts, or changes designated by the constitution as part of the judicial department of the state." *State v. Barker*, 116 Iowa, page 96, quoted in 241 Fed. Rep. p. 198.

And in *Smith v. Douglas County*, the Nebraska case, the county courts are given, not administrative, but such judicial jurisdiction as may be granted by statute. 254 Fed. Rep. page 246.

A careful reading of the above cases shows that they fully sustain the case heretofore cited. *In re City of Chicago*, the distinction being that county courts in the last three cases cannot exercise administrative powers, whereas in the Chicago case and in Arkansas, the county courts' functions are largely occupied in administrative rather than judicial actions.

The question at issue has been finally and definitely settled by the decision of the Supreme Court of the

United States in *Upshur County v. Reisch*, 135 U. S. page 467, arising in the State of West Virginia, and in which state the County Court, just as in Arkansas, exercises administrative as well as judicial functions. In said case the United States Supreme Court decided that the Federal Court could not take jurisdiction over the exercising of such administrative or judicial functions, and that the cause not being a suit within the Federal Removal Act, same was remanded to the County Court. Practically the same question was at issue in the Upshur case, as in the present, it being not the right to tax property, but the amount of such taxes that could justly be laid against the property. The Supreme Court held:

"Is an appeal from an assessment of property for taxation a *suit* within the meaning of the law? In ordinary cases it certainly is not. By the laws of all or most of the states, taxpayers are allowed to appeal from the assessment of their property by the assessor to some tribunal constituted for that purpose, sometimes called a board of assessors, or appeal, or whatever called, it is not usually a court, nor is the proceeding a suit between the parties. It is a matter of administration and the duties of the tribunal are administrative and not judicial in the ordinary sense of the term, though often involving the exercise of *quasi* judicial function. Such appeals are not embraced in the Removal Act. It is true that the tribunal or appeal is called the county court, but it has no judicial powers except in matters of probate; in all other matters it is an administrative board, charged with the management of county affairs."

"The original assessment made by the county assessors could not be called a suit, and could not be removed, and there is justly no more reason for

placing an assessment on appeal within that category, and it is nothing but an assessment; in either case, it is an administrative act; the fact that the board of appeal may swear witnesses, does not make the proceeding a suit." *Upshur Co. v. Reich*, 135 U. S. p. 467.

The County Court, acting as the board of appeal, from the decision of the assessors, as in the *Upshur* case, above cited, had no judicial powers, and the District Court erred in not remanding this cause to the County Court because of its lack of jurisdiction.

It was held in *ex parte Wisner*, 203 U. S. p. 449, that the consent of parties could not give jurisdiction to the Federal Courts where such jurisdiction did not exist by law. This holding however, seems to have been changed in *In re Moore*, 209 U. S. page 490, and in the case of *In re Winn*, 213 U. S. page 458, it being held that consent of parties could confer jurisdiction where the Federal Court had no jurisdiction of the controversy, originally, or by removal. In a later case, *Kreigh v. Westinghouse, Church, Kerr & Co.*, 214 U. S. page 249, where it appeared no motion was made to remand, the court held that jurisdiction was obtained by consent of the parties. In this case a motion to remand having been filed in apt time, the District Court and Circuit Court of Appeals has no jurisdiction unless the cause of action is a suit of a civil nature, and one of which said court could originally have taken jurisdiction.

Unless the assessors for the Road District could have originally filed its report in the United States Dis-

trict Court, and asked said court to raise or lower the various assessments, and exercise the authority given by statute to the County Court in its administrative capacity, then this cause could not be properly transferred from the County Court to the United States District Court, since the jurisdiction of the United States Courts on removal is limited to such suits as might have been brought originally in said courts. The case referred to by the railroad, *Madisonville Traction Co. v. St. Bernard Mining Company*, 196 U. S. page 239, is not in contravention of the claim of the Road District on the question of jurisdiction, since such case only holds that an action for condemnation is such a suit that it may be transferred to the Federal Courts, and could have originally been brought in the Federal Courts. Under Section 1010 of the Act of January 20, 1914, the authority is granted for the removal of cases from a state to a U. S. District Court, the authority being the same as that granted by the Act of 1887, which restored the rule of 1789, the expressed intention of the act being, as stated in *Cochran v. Montgomery County*, 199 U. S. page 60, to restrict the jurisdiction of the Federal Court, and that this was accomplished largely by withholding the right of removal from state to Federal Courts. The court further held:

"Such cases were only liable to removal from a state to the Circuit Court as might, under the law, or in all events under the constitution, have been brought before the Circuit Court by original process. * * * The Act of 1887 restored the rule of 1789, and as we have heretofore decided, those

suits only can be removed of which the Circuit Courts are given original jurisdiction."

Cochran v. Montgomery County, 100 U. S. page 260.

It was also stated, *In re Winn*:

"It is well settled that no case can be removed from the state court to the Circuit Court of the United States unless it could originally have been brought in the lower court."

213 U. S. page 458.

The same question was referred to as one well settled, and not needing argument, by Judge Rogers, as organ of the Circuit Court of Appeals of the Eighth Circuit, as follows:

"The jurisdiction of the United States Circuit Court on removal by the defendant from a state court is limited to such suits as might have originally been brought in the United States Circuit Court by the plaintiff in the first section of that act."

Hall v. Franz, 100 Fed. Rep. page 681.

This was a proceeding for the probate of a will in Arkansas, and the attempt was made to transfer the case to the Federal Court. Since the Probate Court and the County Court, under the Arkansas Constitution have the same powers, this decision is peculiarly applicable as setting forth the duties and jurisdiction of the county and probate courts in Arkansas. As there stated by Judge Rogers, in referring to the question of jurisdiction:

"It must be remembered that the question is not whether Congress has the power under the constitution to confer jurisdiction upon Federal Courts, but the question is, has it been done, and the action of the courts from the foundation of the government down to the passage of the Act of 1888, could be accepted as an absolute denial thereof, and unless it can be shown that by the Act of 1888 the jurisdiction in respect to the subject-matter under consideration was acknowledged, the court should await further action upon the part of Congress before assuming jurisdiction of this new and novel class of cases heretofore confined in England to ecclesiastical courts, and to this country to statutory courts adopted especially for their hearing."

100 Fed. Rep. C. C. A. page 681.

A state constitution may delegate to its courts either judicial powers alone or judicial, administrative and legislative powers, and although cases may be transferred from state to Federal Courts where judicial power is brought into question, such transfer may not be had where the powers are either legislative or administrative.

The State Corporation Commission of Virginia, by the constitution of the state, was given a dignity and importance that added judicial to its other functions, and was for some purposes a court within the commonly accepted meaning of that word. However, when an attempt was made to transfer a proceeding from said Corporation Commission to the Federal Courts, this right was denied by the Supreme Court where the legislative functions were at issue.

"Proceedings legislative in nature are not proceedings in court within the meaning of the statute, no matter what may be the general or dominating character of the body in which they may take place. * * * That question depends, not upon the character of the body, but upon the character of the proceedings."

Citing decisions.

"And it does not matter what inquiries may have been made as a preliminary of the legislative act, most legislation is preceded by hearings and investigations, but the effect of the inquiry and of the decision upon which, is determined by the nature of the act to which the inquiry and decision led up. A judge sitting with a jury is not competent to decide issues of fact; but matters of fact that are merely premises to a rule of law he may decide. *Prentiss v. Atlanta Coast Line Co.*, 221 U. S. page 226, 23 L. E., page 159."

This decision squarely supports the Upshur case, heretofore cited, holding that causes other than judicial ones cannot be transferred to the Federal Court, and further holding that the same person or body of men may in certain instances be a court exercising judicial authority, and in other cases have purely administrative or legislative powers granted under the constitution and law of the state.

Hundreds of road districts have been organized under the Alexander law, the one here under consideration. The Legislature of Arkansas, during the year 1919, at its regular and special term, passed probably two hundred and fifty special road acts. If there exists the right to transfer each assessment of benefits amounting to more

than \$3,000 where the land owner is a non-resident, for decision from the County Court to the Federal Courts then the wheels of justice may well be clogged with such administrative matters, and the courts unable to attend to their judiciary functions, if such transfers are to be allowed. Under the decisions above cited it is most earnestly contended that this cause could not have originally been brought in the United States District Court, and that such court is therefore without jurisdiction to consider same, and that this cause must be remanded to the County Court of Lafayette County, Arkansas.

On April 5, 1920, in the case of *Mo. Pac Ry Co. v. Izard County Highway Improvement District*, 143 Ark. p. 267, the Supreme Court of Arkansas decided that the County Court in making an assessment acts in a purely administrative capacity, and that such action is not a judicial proceeding within the statutes.

The above mentioned case was cited and copy of the opinion placed before the Circuit Court of Appeals, which court failed to follow the decision of the Supreme Court of Arkansas in rendering its decision in this case on April 20, 1920.

The petition for a re-hearing was filed June 24, 1920, and said decision of the Arkansas Supreme Court, as well as the more recent decision of *Monette Road Imp. Dist. v. Dudley*, 222 Southwestern Reporter, p. 59, was again called to the attention of the U. S. Circuit Court of Appeals. They again declined to follow such decision and denied the petition for a rehearing, on August 2, 1920 (Transcript p. 258).

The courts of the United States follow the decisions of the Courts of Last Resort in the several states in the matter of the construction of the Constitution, Statutes, etc., of such states.

United States ex rel. Pierce v. Cargill, 258 Fed. Rep. 458 and cases cited. *Hartford Life Insurance Co. v. Blincoe U. S. Supreme Court*, advance opinions, decided Feb. 28, 1921.

The Supreme Court of the State of Arkansas in *M. & P. Ry. Co. v. Izard County Highway Imp. District* (Ark. Rep. Vol. 143, p. 267), wherein the identical question as to whether or not such a proceeding as that involved in the present case before this Honorable Court, was a *suit* within the meaning of the law authorizing the removal of causes from a state court to a federal court, was an issue, held that an owner of land objecting to Road Improvement District Assessments, on hearing before the County Court was not entitled to a removal of the cause to the United States District Court under the Federal Statute; such hearing being held not to be a judicial proceeding within the jurisdiction of the County Court when exercising the strict judicial functions conferred upon it by the Constitution, and that assessments for local improvements by the Legislature or its duly appointed agents, the Commissioners and the County Courts are not in any sense judicial proceedings within the jurisdiction of the County Court when exercising the strictly judicial functions conferred upon it by the Constitution of the State of Arkansas.

The Arkansas Supreme Court in this case cites the case of *Upshur County v. Rich* (*supra*), which arose upon a statute of West Virginia, and says:

"The jurisdiction of the County Court under the Constitution of West Virginia, when the above decision was rendered was substantially the same as that conferred upon the County Court under our Constitution so far as Roads and the internal affairs of the county are involved. We conclude, therefore, that the assessment of the commissioners and the proceedings thereafter in the County Court were in no sense a suit in law or equity, within the purview of the Federal Judicial Code."

The Supreme Court of Arkansas in a very recently decided case (May 24, 1920), *Monette Road Imp. Dist. v. Dudley*, S. W. Reporter, Vol. 222, page 59 affirmed its holding in *M. & P. Ry. Co. v. Izard County Highway Imp. Dist.* (*supra*).

The Monette Road Imp. Dist. was formed for the purpose of improving certain roads in Craighead County, and said district in this case made application to the Supreme Court of Arkansas for a writ of prohibition directed to the judge of the Circuit Court of Craighead County to prevent said Circuit Court from hearing and determining proceedings involving the validity of the acts of the Commissioners of said District in assessing certain benefits and in attempting to construct the improvement. In deciding the case the Supreme Court says:

"The real question in the case is whether or not the Circuit Court had jurisdiction to grant the relief sought in the complaint.

The functions of the Board of Assessors in assessing benefits, and the Board of Commissioners in adjusting them on complaint of the property owners is not judicial in the ordinary sense, but, it is in the nature of a legislative power.

Boards created as special tribunals for certain purposes may, and sometimes do, act in a judicial or quasi-judicial capacity, and when so acting their proceedings may be reviewed on certiorari, but in the matter now before us, the commissioners do not act in such capacity. (Citing various authorities including the *Izard Company Highway Imp. Dist. Case*) * * *

The writ of prohibition is therefore awarded in accordance with the prayer of the petitioner to prevent the Circuit Court from further proceeding in the matters under consideration."

In re City of Chicago, 64 Fed. Rep. p. 897, the Circuit Court for the Northern Div. of Ill., held that assessment proceedings for municipal improvement were an exercise of the taxing power, and an administrative act, and did not constitute a "suit" within the provisions for removal of suits to federal courts, though they are conducted under judicial forms by a court of general judicial powers.

This was a case where the City of Chicago moved to remand to the County Court of Cook County, a special assessment proceeding for putting in a sewer, which case had been removed to the Federal Court on petition. In a carefully considered opinion, the court, by Judge Seaman, following the decision of the United States Supreme Court in *Upshur County v. Rich* (*supra*), ordered that said remand be made.

We note that a decision upon the question, in such cases as this, as to what constitutes a *suit* within the provisions for removal of suits to federal courts, depends very largely upon the language of the statutes of the state under consideration in each of such suits, and we respectfully submit that there is nothing in the cases referred to by the Circuit Court of Appeals as sustaining the ruling of the court below, that in any manner does away with the opinion of the Supreme Court of the United States in *Upshur County v. Rich*, 135 U. S., hereinbefore referred to. It is shown in the opinion in this case, rendered by Justice Bradley (for a unanimous court) that every decision of the U. S. Supreme Court referred to on this point by the Circuit Court of Appeals as sustaining the ruling of the court below (except 196 U. S. 239), was considered by the court in arriving at the opinion rendered; reference being made particularly to said cases by the court, and after considering same the court unanimously held that such a proceeding for an assessment of property for taxation is not a suit within the meaning of the law authorizing the removal of causes from a state to a federal court. All of said cases so referred to were decided prior to the decision in *Upshur County v. Rich*, except the case of *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239.

This last mentioned case arose under a Kentucky statute in a proceeding for the taking of land by eminent domain, and the question at issue under the Kentucky statute being construed, was the amount of damages which the owner of the land being condemned, was en-

titled to, and for which amount the statute provided for a judgment to be rendered, and this case cannot be relied upon as conflicting with the opinion in *Upshur County v. Rich*, or as controlling in the present case where it is found that the Arkansas statute is in all "essential particulars for the purpose of this discussion" similar to the statute of West Virginia, construed by the Supreme Court of the United States, and held not to justify the removal of said proceedings to the Federal Court.

And so we beg to suggest that a reference to the various cases in federal reporters will show that the decisions therein depend upon the wording of the statutes and constitutions of the various states wherein these cases arose, and that no such decision referred to should be controlling so as to overturn the decision of the Supreme Court in *Upshur County v. Rich*.

The case of *Smith v. Douglass County*, 254 Fed. 244, was a proceeding in a matter of an assessment of inheritance taxes against real and personal property under a Nebraska statute, against the property of a decedent, which property was claimed by another, as surviving joint tenant, so that the proceeding was a contest *inter partes* between the two claimants and under the Nebraska Constitution, the court properly held that it was a suit within the removal statutes.

In re Jarnecke, 69 Fed. 161. It was held that under the Indiana statute prescribing proceedings for the establishment of drains and assessing the benefits and damages thereof, the cause was removable to the Federal Court. But an examination of the opinion shows that it

was the particular nature of the proceedings under the Indiana statutes that differentiates said case from the principle announced in *Upshur County v. Rich*; and the court in discussing said statute and the proceedings thereunder, says:

"The proceeding does not involve the mere exercise of the taxing power of the state. It is in the nature of the exercise of the power of eminent domain, and contemplates the taking of land whereon to construct the drain, as well as the assessments of benefits on the remaining lands, whereby to pay for its establishment and construction. In this particular it differs from a proceeding solely for the purpose of raising money by the exercise of the taxing power to aid in the construction of a public improvement. This differentiates the present case from that of *In re City of Chicago*, 64 Fed. 897, and other cases of like character, which holds that a proceeding solely for the purpose of raising money by the exercise of the taxing power for the construction of a public improvement is not a suit, although such proceedings may be conducted in a court of general jurisdiction."

The case of *In re Stutsman County*, 88 Fed. 337, was a proceeding for the collection of delinquent taxes provided for by the laws of North Dakota. The District Judge (Amidon), in his opinion recognizes the binding force of the opinion in *Upshur County v. Rich* (*supra*), and shows that under the terms defined by the Supreme Court of the United States, the proceeding under consideration has every element of a suit. And the court shows that "it has been expressly held by the Supreme Court of Minnesota (from the statute of which the North

Dakota law was taken) and North Dakota, that the proceedings under this statute is a *suit*, and the same conclusive force is given to a judgment entered therein as to judgments and decrees in actions at law and suits in equity."

The case of *Terre Haute v. Railway*, 106 Fed. 545, was remanded to the state court on account of want of the requisite diversity of citizenship, but for which the cause might have been removed. In holding that but for the lack of diverse citizenship, the cause might have been removed, the court held this upon a construction of the Indiana statute providing for the appropriating of real estate for the opening of streets, in which it is set forth that the questions of benefits or damages are "issues of law and fact" that "may be formed, tried, and determined as in other actions at law."

There is nothing in the case to sustain the removal of the cause at present under consideration by this Honorable Court.

In the case of *Drainage District No. 19 v. Ry. Company*, 198 Fed. 253, the decision of the District Court for the Western District of Missouri overruling the motion to remand to the state court, is based upon the wording of the Constitution and statutes of the State of Missouri. The court holding that the proceedings were a suit in the county court vested by Art. 6, paragraphs 1 and 36 of the Missouri Constitution with judicial powers and we submit that there is nothing whatever in said opinion to uphold the order of removal in the cause under

consideration. The court in the commencement of its opinion notes that similar questions in the Federal Courts have been variously decided according to the facts and the local laws specifically involved, and says: "This case must be determined upon its own facts and the special statute under which it arises."

In the case, *In re Mississippi Power Company*, 241 Fed. 194, decided by the District Court of Iowa, next referred to by the Circuit Court of Appeals, the motion to remand was overruled, but here again the order of the Federal District Court was made after the cause had by appeal, provided for in the statute, reached the District Court of the state, and it is clearly shown in the opinion that the removal could not have been made simply upon the assessment proceedings. The following is a quotation from the district judge's opinion:

"(1) Of course, the assessment and levy of taxes is legislative in its character, or, as it is sometimes expressed, it is administrative; but it is an exercise of the legislative power.

The legislature has the power to designate the tribunal which shall make assessments upon property. It may confer this power upon a judicial or a non-judicial body, and the owner of property assessed, cannot claim that he has been deprived of, 'due process of law,' because the legislature does not permit him to have a hearing in court. So that the Legislature of Iowa had the power to prescribe a method of assessment, and levy and collection, of taxes, without providing for any hearing before any court.

(2) It is the contention of appellant that by the appeal provided for, the District Court of the

state is simply made part of the 'machinery' by which, and through which the taxing power of the state is exercised. It is insisted that the action of the court in reviewing upon appeal, the action of the board of review is administrative rather than judicial. If this be true, then this proceeding is not a suit within the Removal Act.

But at the outset, we are confronted with the fact that the District Court of Iowa is a constitutional court, possessed of no administrative powers or functions, and the Supreme Court of Iowa has specifically held that non-judicial powers cannot be conferred upon the District Court by the Legislature."

In the case of *C. M. & St. Paul Ry. Co. v. District No. 8*, 253 Fed. 491, the remaining case referred to by the Circuit Court of Appeals in support of the refusal to remand the case at bar, the same district judge rendered the opinion as in the next preceding case hereinabove cited, and it appears that this case had been passed upon by the district judge (Wade, J.), prior to the submission of the case *In re Mississippi Power Co.* (*supra*), and Judge Wade had sustained the motion to remand to the state court.

In a supplemental opinion rendered after a decision made in the Mississippi Power Company case, Judge Wade upon a further study having been made of the Iowa statutes, overruled his order to remand and held that under the Iowa statutes the case was removable; but in this opinion there is nothing to sustain a refusal to remand the case at bar. In speaking of the Iowa statutes under consideration and the railway company as a party to the suit, the court says:

"It proceeds in the only way authorized by the Legislature. There was no *suit* possible until it had perfected its appeal, but instantly the appeal was perfected there was a *suit*, and in the spirit of the law I believe that it ought to have and I believe that it has the right to remove the case for trial."

In *City of Toccoa v. Marchbanks*, 261 Fed. 684, in a condemnation proceeding under the Civ. Code of Georgia, the District Court N. D. Georgia, held upon a construction of the Georgia statutes giving the right of appeal to the Superior Court of the County, the City of Toccoa had the right to transfer the cause to the Federal Court, but held further that, in accordance with the Georgia statutes, the time for filing a petition for removal was limited to the 10 days allowed for entering appeal, which 10 days having expired, said cause was remanded, showing how closely the state statutes are followed in deciding questions of this character.

In *M. P. Ry. Co. v. Izard County Highway Improvement District*, *supra*, the Supreme Court of Arkansas held an assessment of benefits is not a "suit," and that the decisions of the County Court are administrative and not judicial. Said case is on all fours with the present one, and since the federal courts will follow the decisions of the court of last resort of a state in construing its own constitution and statutes, this case should be remanded to the LaFayette County Court, as the United States Courts are without jurisdiction.

To sustain the second ground alleged in the petition for writ of certiorari, to-wit: That the Circuit Court of

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JAMES T. MARSH

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1921.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT NO. 2 OF
LAFAYETTE COUNTY, ARKANSAS,

Petitioners,

vs.

No. **141**

ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY,

Respondent.

On Writ of Certiorari to United States Circuit Court of
Appeals for Eighth Circuit.

BRIEF AND ARGUMENT FOR RESPONDENT

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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

COMMISSIONERS OF ROAD IM- PROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY, ARKANSAS, Petitioners,	} No. 552.
vs.	
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Respondent.	

On Writ of Certiorari to United States Circuit Court of
Appeals for Eighth Circuit.

BRIEF AND ARGUMENT FOR RESPONDENT.

STATEMENT OF FACTS.

Road Improvement District No. 2 of Lafayette County, Arkansas, the plaintiff in the District Court, is a municipal corporation, organized under act 338 of the Acts of 1915 of the General Assembly of the State of Arkansas, commonly known and hereinafter referred to as the Alexander Road Law. In an ap-

pendix to this brief, we set out so much of that act as is pertinent to the issues.

On January 18, 1918, a majority of land owners within a district embracing approximately 70,000 acres of land in Lafayette County, Arkansas, including twenty and one-half miles of the St. Louis Southwestern Railway Company, filed a petition under Sections 1 and 2 of the Alexander Road Law in the County Court of Lafayette County, praying that a district be incorporated for the purpose of constructing a gravel road across the County, parallel with the main line of respondent (Printed Record, pp. 8 to 12).

Thereafter the County Court, upon due notice, made and entered an order, incorporating the district under the terms of the Alexander Road Law. This order of the court has become final and conclusive, since it was subject to attack only upon the appeal within thirty days, and no appeal therefrom was taken (Printed Record, p. 17).

On March 15, 1918, upon petition of the Road District, the County Court, in accordance with Sections 9 and 12 of the Alexander Road Law, appointed a board to assess the benefits and damages accruing to the lands within the district by reason of the building of the road (Printed Transcript of Record, p. 30).

The assessors upon completing their assessments delivered same to the Board of Commissioners and

thereupon the District, in compliance with Section 13 of the Act, filed the same in the County Court on May 22, 1918.

Whereupon the County Court entered an order directing the clerk of the court to publish a notice warning property owners within the district, that said assessments had been filed and that any one objecting thereto could file objections upon which a hearing would be had in the County Court on June 28, 1918 (Printed Transcript, pp. 34 and 35).

Benefits in said assessment were assessed against rural property in the aggregate amount of \$212,103.00; against urban property, \$57,490.00; and against the respondent, \$49,706.50 (at rate of \$2,000.00 per mile on main line, and \$1,500.00 per mile on branch line property); and against the Louisiana & Arkansas Railway in the aggregate of \$2,080.00 (Printed Transcript, p. 192).

On June 27, 1918, the respondent, a railroad corporation organized and doing business under the laws of Missouri, a citizen and resident of St. Louis, Missouri, filed in the County Court a petition and bond for removal of the cause to the Federal Court. This petition was denied (Printed Transcript, pp. 42 and 43).

On July 18, 1918, the respondent filed a certified copy of the record of the said suit in the District Court of the United States, at Texarkana (Printed Record, p. 6).

On November 7, 1918, petitioners filed a motion to remand the cause in Lafayette County Court, which motion was heard and overruled on February 12, 1919 (Printed Record, pp. 50 and 51).

The case was heard before the Court and Jury, but upon the conclusion of the evidence, the Court, withdrew the case from the Jury, on its own motion,, without objection (Printed Transcript, p. 231).

Thereupon the Court rendered a judgment, reducing the benefits against respondent from \$49,706.50 to \$10,485.48 (Printed Transcript, p. 62).

Both parties prosecuted writs of error to the Circuit Court of Appeals, which, on April 29, 1920, affirmed the judgment of the District Court.

The Road District prayed a writ of certiorari which this Court has granted.

(To follow at end of page 5)

The decision in the Icard County case would not control that in this case, since it was rendered long after the judgment of the District Court herein (and indeed but a few days prior to the filing of the Opinion of the Court of Appeals herein), even if it related solely to a question of state law, and was by the Federal Courts felt to be binding upon cases brought subsequent to its rendition.

Burgess vs. Seligman, 107 U. S. 20.

BRIEF.

The petitioner's first assignment of error is that both the District Court and the Circuit Court of Appeals erred in overruling its motion to remand the cause to the County Court of Lafayette County. This assignment is based upon its contention that the proceeding is an administrative and not a judicial proceeding or suit within the removal statutes.

The determination of this assignment of error depends upon whether or not the facts in this case bring it within the decision of *Upshur v. Rich*, 135 U. S. 467, 34 L. ed. 196, or within the class of cases of which the *Pacific Removal Cases*, 115 U. S. 1, 29 L. ed. 319, and *Madisonville Traction Company v. St. Bernard Mining Company*, 196 U. S. 239, 49 L. ed. 462, are representative. The District Court and the Circuit Court of Appeals held that the latter was true while the State Supreme Court in *Missouri Pacific Railroad Company v. Izard County Highway Improvement District No. 1*, 143 Ark. 261, now before this court upon writ of error, held to the contrary.

The plaintiff in error contends the decision of the Supreme Court of Arkansas in the case last mentioned has concluded in its favor the question of removability.

It would seem strange, indeed, if the question of the right to remove could be concluded and determined by the decision of the state court.

The United States courts are necessarily tribunals to determine matters of this kind.

It is inconceivable that a state court can deprive a citizen of its rights by holding that a particular class of cases is not removable to the Federal Court, or by doing the same thing indirectly by holding that any particular tribunal is not acting judicially.

Upon this question the Court in *Upshur v. Rich*, 135 U. S., p. 467, *supra*, said:

"Although we are not concluded by this decision, it is so much in harmony with our own decision on the same question that we accept it as correct."

Therefore if the decision of the Supreme Court of Arkansas, upon the question of removability, is not in harmony with the decisions of this court, this court is

lative and not judicial, and, second, that in the Upshur case the Supreme Court, in "passing upon the statute of West Virginia, held that an appeal from an assessment of property for taxation was not a suit within the meaning of the law, and also the jurisdiction of the County Court under the Constitution of West Virginia was substantially the same as that conferred upon the County Court under our Constitution."

The decisions of this court lay down the following principle: If a given proceeding (1) involves the adjudication of juridical rights of which the District Court would have had original jurisdiction, and (2), is a contest *inter partes* between citizens, and (3) is pending in a judicial tribunal empowered to hear and determine questions of law and fact, it is a removable suit.

Upshur v. Rich, 135 U. S. 467, 34 L. ed. 196;

Madisonville Traction Co. v. St. Bernard Mining Co., 196 U. S. 239, 49 L. ed. 462;

Pacific Removal Cases, 115 U. S. 1, 29 L. Ed. 319;

Boom Company v. Patterson, 98 U. S. 403, 25 L. ed. 206;

Hess v. Reynolds, 113 U. S. 73, 28 L. ed. 927;

Searl v. School District No. 2, 124 U. S. 197, 31 L. ed. 415;

Smith v. Douglas County (C. C. A.), 254 Fed. 244.

We shall consider the facts in this case with a view of demonstrating that the instant proceeding satisfies all of these requirements.

I.

This Cause Involved the Adjudication of Juridical Rights of Which the District Court Had Original Jurisdiction.

In the case of *Prentis v. Atlantic Coast Line R. R.*, 211 U. S. 210, 53 L. ed. 150, this Court said, "A judicial inquiry investigates, declares and enforces liabilities as to present or past facts and under laws supposed already to exist. That is its purpose and its end. Legislation on the other hand, looks to the future and changes existing conditions by making new rules to be applied thereafter."

The exercise of the power of eminent domain in so far as the determination to take a given piece of property is concerned by a state is clearly a legislative function. On the other hand the ascertainment of the owner's damages by reason of that taking is a judicial function.

The determination of whether or not certain improvements should be made is a legislative act. So, also, is the determination or manner in which the funds necessary to pay for it shall be raised, and how the tax shall be apportioned. The Legislature may provide

that the entire burden shall be borne by the public or by the specific property benefitted by the improvement or by both, may itself apportion the tax or it may lay down the rules by which the burden shall be apportioned, provided, of course, that it keeps within the constitutional limitations. All these facts are clearly legislative.

In laying down new rules, again the legislature may provide, as it has done in the act in question, that the burden may be apportioned according to the benefits. So much of the act in question as provides that the tax shall be borne in accordance with the benefits, and that the benefits shall be determined in judicial proceedings is an exercise of legislative power, a looking to the future. But in the same connection the act confers two juridical rights upon the land owners which they may enforce in the courts; first, that the burden shall be apportioned in accordance with the benefits, and second, that the amount of benefits shall be determined by the courts.

The determination that the burden shall be apportioned in accordance with the benefits is legislative, but the determination by a court of the amount of the benefits is essentially a judicial function.

Under the Alexander Road Law, the Legislature itself did not attempt to fix the benefits, but it did provide that the property owners within the district could

be assessed for the cost of the improvement, **only to the extent that the value of their property was enhanced by it.**

The act provided that in the same proceeding, and in the same manner in which the benefits were to be assessed and adjudicated, the damages to property owners were likewise to be fixed and adjudicated.

There is no difference between the legal principles or processes by which the amount of damages which the construction of a road will do to a given piece of property are fixed, and those by which the amount of benefits which it will confer upon that property are fixed.

In either case, the measure of the damages or of the benefits, is the difference between the value of the property before the road is constructed and its value after the road is constructed. To put it another way, damages are negative benefits, or benefits are negative damages.

Under the act in this case the Road District is permitted to set off benefits against damages, and likewise the property owner is permitted to set off the damages against benefits (Section 12 of the Alexander Road Law).

The conclusion is irresistible, that since a proceeding to measure the quantum of damages done by an improvement unquestionably involves juridical rights of property, then in like manner a proceeding to measure the amount of benefits conferred by the improve-

ment also involves the adjudication of juridical rights.

It seems a matter of supererogation to state, much less to cite, authority to support elementary reasoning so self evident. We do both only because the learned Supreme Court of the State in the IZARD COUNTY case has held that the issues are administrative and not judicial.

The fundamental error of the State's decision lies in the fact that it is predicated upon the premise that an action wherein a municipal corporation ceases to have benefits ascertained and layed as a lien against land is in all respects analogous to the case (as in *Upshar Rich*), where a property owner protests against the amount of the assessment of his property for the state and county taxes. That this premise is erroneous is conclusively settled by this Court.

The proceeding involved in the case of *Union Pacific Railway Company v. Kansas City* (Pacific Removal Cases, 115 U. S. 1, 29 L. ed. 319) is identical in all respects with the case at bar. The proceeding there was brought by Kansas City to widen and improve one of its streets. The initial assessment of benefits and damages, instead of being made by a Board of Assessors, as in this case, was made by the Mayor and a jury. In each case, however, the initial assessments were preliminary inquests. From the initial proceeding the Railroad Company appealed to the Circuit Court of the state, from which it removed the case to

the Federal Court. This Court, in deciding that the case was removable, held that the question whether or not the assessment of benefits against the property of the Railroad Company was too large, was a juridical one and constituted a removable suit.

The same rule is stated and applied in the following cases:

- Mississippi & R. R. Boom Co. v. Patterson, 98 U. S. 403, 25 L. ed 206;
- Searl v. School District, 124 U. S. 197, 31 L. ed. 415;
- Madisonville Traction Co. v. St. Bernard Mining Co., 196 U. S. 239, 49 L. ed. 462;
- Smith v. Douglas County, 254 Fed. 244;
- Jarencke Ditch, 69 Fed. 161;
- Re Stutsman County, 88 Fed. 337;
- Terre Haute v. R. R. Co., 106 Fed. 545;
- Drainage District No. 19 v. Ry. Co., 198 Fed. 253;
- Re Mississippi Power Co., 241 Fed. 194;
- C. M. & St. P. Ry. Co. v. District No. 8, 253 Fed. 491.

The claim is made, however, at pages 26 and 27 of petitioner's brief, that "Unless the Assessors for the Road District could have originally filed its report in the United States District Court, and asked said Court to raise or lower the various assessments, and exercise the authority given by statute to the County

Court in its administrative capacity, then this cause could not properly be transferred from the County Court to the United States District Court, since the jurisdiction of the United States Courts on removal is limited to such suits as might have been brought originally in said Courts.”

This statement is based, no doubt, upon the authority of the cases which hold that a suit cannot be removed from a state court unless it could have been brought originally in the District Court of the United States.

Learned counsel for the petitioner have mistaken the form for the substance. Those authorities hold merely that the cause which is sought to be removed must be one of which the District Court could have had original jurisdiction. That is, that it must be a suit; it must be between citizens of different states, etc., and must involve more than \$3,000.00, etc.

When a controversy meets with these requisites, then it is beyond the power of the state legislature to prescribe any form of procedure which will prohibit the Federal court from exercising its jurisdiction. The jurisdiction of the Federal court is not destroyed because the State has undertaken to declare that the proceeding can only be maintained in a designated State Court, or has indirectly attempted to bring about that result by providing for a peculiar or unusual mode of initiation.

There is no reason, however, why this particular proceeding could not have originated in the District Court. The assessment roll, as will be hereafter seen, was a written petition by the district, claiming that it had benefited the property of respondent in a given amount, and praying that such amount be fixed as a lien against respondent's property.

The Alexander Road Law makes the proceeding involving the determination of the amounts of benefits, separate and distinct in its entirety from the proceedings involving the organization and corporation of the district, and the administration of its affairs.

While the petition of the district laying the assessment of benefits incorporates in one document the benefits against the property of a number of property owners, yet the contest between each property owner and the district as to the amount of his benefits, is a separate and distinct controversy and under the terms of the Act it is provided that his objection and appeal shall affect only the particular tract of land or other real property concerning which it is taken (Sections 13 and 14).

In *Fitch v. Creighton*, 65 U. S. 159, 16 L. ed. 596, this Court held that it had jurisdiction over a cause involving the enforcement of an assessment of benefits; a proceeding unknown either at law or in equity.

In *Parker v. Overman*, 59 U. S. 137, 15 L. ed. 318,

this Court held that it had jurisdiction of a special statutory remedy, whereby a purchaser at a judicial sale, filed an *ex parte* petition in the court asking that the sale be confirmed, and where the Court, after the publication of warning order and hearing, did confirm the sale.

In *Fleitas v. Richardson* (147 U. S. 536, 37 L. ed. 272), the Court held that the District Court had original jurisdiction over a proceeding under the Louisiana Code of Practice of "Executory Process" and a sale of mortgaged property for payment of debt.

In *Sheffield Furnace Co. v. Withrow* (149 U. S. 573, 37 L. ed. 853), this Court held that the District Court had jurisdiction of special statutory proceedings to enforce mechanics' liens.

There is no difference between a proceeding wherein a mechanic, claiming that he has put certain improvements upon the owner's property without any contract with that owner, and asks that the owner's property be subjected to a lien therefor, and this proceeding wherein the petitioner alleges that it has benefitted the respondent's property and prays that such property be subjected to a lien therefor.

The conclusion to be deduced from all these cases is that the **form** of proceeding is of no consequence in determining whether or not the case is removable.

The issue, however, is foreclosed by the case of the *Madisonville Traction Company v. St. Bernard Mining Company* (196 U. S. 239, 49 L. ed. 462).

In that case, under the Kentucky statutes, the Traction Company, being unable to agree with the owners of the lands which it desired to condemn for its use, filed with the clerk of the County Court a description of such lands and a petition that Commissioners be appointed to assess the damages.

The Commissioners were duly appointed, as required by the Act, and after filing their report, the clerk was required to issue process by warning order as to nonresident owners, and by personal service to resident owners. The case under the statute was then to be tried in the County Court, and if either party was dissatisfied it could be appealed to the Circuit Court and tried *de novo*. It is to be noted that the procedure is exactly the same as in the case at bar.

After the Commissioners had been appointed and filed their report, but before any action was taken, the Mining Company filed its petition and bond for removal. It was there urged, as it is here urged, that the suit was not one that could be removed, since it would have been impossible for the Traction Company to have instituted the proceedings in the Federal Court in the first instance.

In reply to this contention the Court said:

“Why could not the proceeding instituted in the County Court have been brought originally in the Federal Court? This case, as made in the County Court, was beyond question a judicial proceeding; it related to property rights, the parties are corporate citizens of different states; and the value of the matter in dispute exceeded the amount requisite to give jurisdiction to the Circuit Court. It was, therefore, a proceeding embraced by the very words of the Constitution of the United States, which declares that the ‘Judicial power shall extend to controversies between citizens of the United States,’ as well as by the Act of 1887, Paragraph 1, which declares that the Circuit Courts of the United States shall have original cognizance, concurrent with the courts of the several states, of all suits of a civil nature at common law or in equity where the matter in dispute exceeds, exclusive of interest and cost, the sum of \$2,000.00 in which there shall be a controversy between the citizens of different states.”

Although there was a dissenting opinion in this case, such opinion was to the effect that the power of eminent domain of the State Legislature can be restricted by it up to the point where nothing is at issue but the assessment of damages, but when that point is reached a controversy within the meaning of the removal statutes is had because the exercise of sovereign power of the state is at an end, and the former owner has a right to his say.

Since the case at bar is only a question of the benefits and damages, both the opinion of the Court and the dissenting opinion sustain our contention.

II.

**The Proceeding Was a Controversy Inter Partes
Between Citizens.**

In the Upshur case, *supra*, the Court pointed out that the State of West Virginia was a party to the suit, if it was a suit, and that such a suit not in the category of removable cases, since "The state is not a citizen if the county is." No such situation is met here. Neither the state nor the county was a party and neither has any interest in the case. Petitioner is a body corporate, authorized to sue and be sued.

In the Upshur case, there was considered an application of a tax payer addressed to an administrative board of the county, praying that the assessed value of his property for ad valorem taxes be reduced. The case at bar was initiated by a municipal corporation against the respondent by the filing of a written claim that it, the corporation, by the construction of a public road, had enhanced the value of respondent's property, and praying that the Court find such enhancement to be the amount of benefits assessed by it, and that same be declared a lien upon the land of the respondent.

This pleading, to all intents and purposes, amounted to a petition or complaint at law. When this petition was filed the clerk of the court gave notice to the owners of land affected, by publication of a warning order, in precisely the same manner as constructive notice by publication is given in the State of Arkansas, or in any action where jurisdiction can be obtained by constructive rather than personal service of process.

After this process had been served, respondent appeared and before the day upon which it was required to answer this petition, which answer, by the way, the statute required to be in writing, filed its petition for removal to the District Court.

If, instead of filing the petition to remove, respondent had answered, the cause would have been heard by the Court, petitioner appearing on one side and the respondent on the other.

How can it be said that a proceeding wherein one party appears demanding that a fixed amount of money be declared to be a lien upon the property of another party, and such other party also appears and contests that demand, is *ex parte* and not *inter partes*?

There is no difference between the situation in this case and that in the *Pacific Removal* case, *supra*, and in the *Madisonville Traction* case, *supra*. In both of these cases, and in the instant case, we have the situa-

tion of a corporation as the party upon one side, sometimes a municipal corporation, sometimes a private corporation, exercising some high prerogative of the state, such as the right of eminent domain in the Madisonville case, and the property owner as the party upon the other side. In each case a sum of money is in controversy and that sum is measured by the difference in value of the property owner's property before and after the thing which is sought to be done by the corporation is done. If such a proceeding is not an adversary one inter partes, then it is impossible for us to conceive a case that would meet that requirement.

III.

The County Court of Lafayette County, in Which This Cause Was pending at the Time it Was Removed, Was a Judicial Tribunal Empowered to Hear and Determine Questions of Law and Fact.

Petitioner's contention and the decision of the Arkansas Supreme Court in the Izard County case, that the County Court of Lafayette County, Arkansas, was not a judicial tribunal in hearing the cause as to the amount of assessments for benefits, but was an administrative board, is based almost entirely on the fact that in the Upshur case, *supra*, this Court held that a

board of three Commissioners, bearing the misnomer of "County Court," was not a judicial tribunal.

Whether or not a given tribunal is a judicial or administrative one should not be determined by the name which has been given it by the statutes, but should be determined by the power and jurisdiction which it exercises.

The fact that the tribunal was designated "County Court" in the Upshur case, does not mean that all "County Courts" are non-judicial tribunals, and causes pending therein non-removable. In *Madisonville Traction Co. v. St. Bernard Mining Company*, supra, the "County Court" of Kentucky, upon which the Arkansas court is modeled, was held to be a judicial tribunal. At page 251 of that decision, it is stated:

"There was, as already said, a judicial proceeding initiated in a tribunal which constitutes a part of the judicial establishment of Kentucky as ordained by its Constitution (Kentucky Statutes, paragraph 120), and the Court, although charged with some duties of an administrative character, is a judicial tribunal and a court of record."

An analysis of the constitutional and statutory jurisdiction of the County Courts of Upshur and Lafayette counties demonstrates beyond peradventure of a doubt, that the state court's statement that their

jurisdiction was "substantially the same" is wholly erroneous.

In the Upshur case it is stated that the Constitution of West Virginia of 1872 conferred judicial powers upon the county courts, but by an amendment in 1880, its judicial powers were withdrawn except in matters of probate. By the same amendment it was provided that the county court should be composed of three commissioners upon whom was conferred "jurisdiction" in the matters of probate, but "superintendence **and administration**" in internal police, etc., and the Legislature was authorized to confer other powers upon it "**not of a judicial nature.**"

Any order which was made by the so-called County Court of West Virginia, was not one from which an appeal would lie to the courts constituting the judicial system of the state, but was an administrative order, reviewable by the court, only by collateral attack (*Low v. County Court*, 27 W. Va. 785).

That the situation in the instant case is wholly different is shown by the constitution of the State of Arkansas. In this connection we regret that we are compelled to point out that the quotations from the State Constitution set out at pages 8 and 9 of the petition for writ of certiorari, and at pages 22 and 23 of the brief thereon, are unintentionally misleading, in that the sections of the present constitution granting juris-

diction are omitted and the provisions of the former constitution of 1868 substituted. This error has been corrected in petitioner's second brief, page 20.

Section 1 of Article VII of the present Constitution of the State reads as follows:

"The judicial power of the State shall be vested in one Supreme Court, in Circuit Courts, in County and Probate Courts and in Justices of the Peace."

Section 28 of Article VII provides:

"County Courts shall have exclusive original jurisdiction in all matters relating to county taxes, roads, bridges, ferries, paupers, bastardy, vagrants, and the apprenticeship of minors, the disbursement of money for county purposes and in every other case that may be necessary to the internal improvements and local concerns of the respective counties."

In the case of *Pierce v. Eddington*, 38 Ark. 150, it was held:

"The County Court is a superior court of record in the sense that within the scope of the subject matters over which it has jurisdiction and in the absence of a showing to the contrary, it will be presumed that it has acted upon facts sufficient to maintain its action."

In the case of Board of Directors of St. Francis Levee District v. Redditt, 79 Ark. 154, an act of the legislature conferred upon the County Court original jurisdiction in a proceeding for the assessment of damages caused by the construction of a levee by a municipal corporation. It was contended upon behalf of the land owners in the case cited that this act was unconstitutional. The Court, in passing upon this question said:

“The constitution vests in the County Court exclusive original jurisdiction in all matters concerning county taxes, roads, bridges, etc., and then this additional jurisdiction: ‘And in every other case that may be necessary to the internal improvement and local concerns of the respective counties’ (Const. 1874, Art. VII, Sec. 28). Public levees to reclaim overflowed and swamp lands and restrain inundation from the mighty rivers within this state, and bordering it are the best types of internal improvements and are indisputably within the contemplation of this clause of the constitution. Therefore it follows that the jurisdiction conferred on the County Court in these matters is within the constitutional jurisdiction of that court, and the statutes are not for that reason void.”

Section 33 of Article VII reads:

“Appeals from all judgments of County Court or Courts of Common Pleas, when established,

may be taken to the Circuit Court under such restrictions and regulations as may be prescribed by law."

Section 2287 of Crawford & Moses Digest of the Arkansas statutes provides that "appeals shall be granted as a matter of right to the Circuit Court from all final orders and judgments of the County Court * * *."

Section 2236 of the same digest declares that upon such appeal the Circuit Court "shall have jurisdiction of the subject matter to the same extent as though original jurisdiction had been conferred upon the Circuit Court by law."

It follows as corollary from this statute that if the County Court acts in a legislative or administrative capacity in passing upon benefits that the Circuit Court also acts administratively. The jurisdiction of the County Court over the matter is precisely the same as the jurisdiction that the Circuit Court would have upon appeal. It should not be gainsaid that this proceeding when it reaches the Circuit Court, which is unquestionably a court and not an administrative board, would become a removable suit. Since under the constitution and the statutes the County Court has precisely the same jurisdiction as the Circuit Court, and since, indeed, it may be stated that the Circuit Court has no jurisdiction except that which

the County Court has, it follows that the case must be a suit when it reaches the County Court.

That the Circuit Court upon appeal acts judicially is clearly shown by the IZARD County case. At page 269 of that decision, we find this statement:

“Cases where there is an appeal under the statute from trial in the Circuit Court on the question of the amount of benefits assessed in the improvement district **fall within the rule that this court on appeal will be bound by findings of the trial court where the evidence is legally sufficient to sustain the finding.**”

That is, the Circuit Court is not acting administratively but judicially, nor is the Supreme Court sitting as a reviewer of the facts, a quasi super board of assessors, but the judgment of the Circuit Court as to the amount of benefits is the judgment of the court at law which the appellate court will not disturb if there is any evidence to support it.

The County Court, as we have seen, is a court of record of superior jurisdiction, created by the constitution. The Circuit Court is also a superior one of record created by the constitution. When these two constitutional courts act upon the identical pleadings, and the identical evidence, it is inconceivable that one of them could be acting in merely an administrative capacity while the other is acting in a judicial ca-

capacity. Especially is this true when the one which is acting judicially derives its jurisdiction solely through the other, acting administratively. One of the two things must be true, either both the County Court and the Circuit Court in passing upon the question of the amount of benefits exercised judicial powers or both exercised legislative powers.

As further vindicating our contentions that the County Court of Arkansas is a superior court of record, and so considered throughout the Constitution of Arkansas, it is well to observe Section 37 of the same Article VII, which provides that "The Judge of the County Court may issue provisional writs such as orders for temporary injunctions and writs of *habeas corpus*." Certainly the issuance of these high prerogative writs is not vested in administrative boards, but only in courts.

Preceding the Alexander Road Improvement District Law by several years, a general drainage statute existed in Arkansas upon which the Alexander Road Law is largely based, and in considering the jurisdiction of the County Court and whether that jurisdiction is administrative or judicial in regard to roads, it is vital to weigh the decisions upon the general drainage law as throwing light upon the subject. The most striking feature of the general drainage district law, as indicating a fixed intent of the General Assembly to treat the proceedings as always judicial in

character, is that the identical act applies whether the district operates in one county or in more than one, but if in one county only, the County Court of that county has jurisdiction; but, "if land in more than one county is embraced in the proposed district, the application shall be addressed to the Circuit Court of either county and all proceedings shall be had in such Circuit Court."

C. & M. Digest, Section 3607, Act Apr. 28, 1911,
p. 193, Sec. 1.

Nothing could more strongly indicate a determination to make the proceedings judicial than this provision, because the Circuit Court is the court of general jurisdiction in Arkansas, and does not act ministerially in any respect whatever, but is always a court and its acts are always judicial.

Further vindicating the contention that acts of the County Court under the general drainage statute of Arkansas are judicial purely, and not administrative, let us remember that condemnation proceedings are always judicial and removable, and that under the general drainage statute the filing of the assessment of benefits is also the filing of the assessment of damages, and that unless objection be made, the order establishing the assessment of benefits establishes the damages and condemns the land.

C. & M. Digest, Sections 3613, 3615, 3616.

The provisions of the general drainage statute above referred to is upheld as being due process of law for the condemnation of lands in the case of *Dickerson v. Tri County D. D.* (1919), 138 Ark. 471.

This provision for the condemnation through the assessment which has been sustained as being due process of law, appears substantially in the *Alexander Road Law* above referred to.

In the case of *Road Improvement District No. 6 v. Hall*, 140 Ark. 241, 215 S. W. 262, the Court held that the condemnation proceeding by filing the assessment under the *Alexander Road Law* was not exclusive, but that the Commissioners might bring suit in the Circuit Court to condemn the land for right of way, or might follow the provision for assessing damages to the land and thus taking it summarily. The Court held that if the property owner demanded an assessment of damages by a jury, an action should be instituted in the Circuit Court. In other words, the result of this decision is, that the Court upheld the statute as providing for a condemnation through the County Court by the mere confirmation of the assessment of damages, but upheld also, as an additional remedy, a separate proceeding in the Circuit Court. The proceeding in the Circuit Court would be beyond doubt, a suit and removable as such. It seems plain to us, that the alternative remedy by assessment of damages, and its confirmation through the County

Court must likewise be a judicial proceeding and not merely an administrative one. Otherwise, the mere form of the proceeding, and not the substance, dictates the question of removability and a state statute can take away the jurisdiction of the Federal court, merely by giving a different form to a condemnation suit.

In the statute in question, section 13, it is provided, that "the County Court shall hear and determine the justice of any assessment of benefits or damages, and is hereby authorized to lower or raise any assessment upon a proper showing to the Court."

In section 14 it is provided, that "At the hearing provided for in the preceding section, and after the County Court shall have considered the assessment of benefits, it shall enter its findings thereon, either confirming the assessment of benefits against the said property, or increasing or diminishing the same, and the order made by the County Clerk shall have all the force and effect of a judgment against all real property in the said district, and shall be deemed final, conclusive, binding and incontestable, except in direct attack upon appeal."

It is further provided in section 5432, that the County Court shall enter an order "which shall have all the force and effect of a judgment, levying the tax to pay the estimated cost of the improvement with ten per cent additional."

(To follow the first paragraph on page 30)

In a number of the Arkansas Improvement District Acts the Assessment of Damages and Benefits is made final unless "Suit be brought to review the same" within a limited time. The State Courts have held that in such cases, even where no forum is designated, the remedy to review the Assessment is by suit in Equity, where the questions are tried in precisely the same manner as they are tried in the County Court under the Alexander Law.

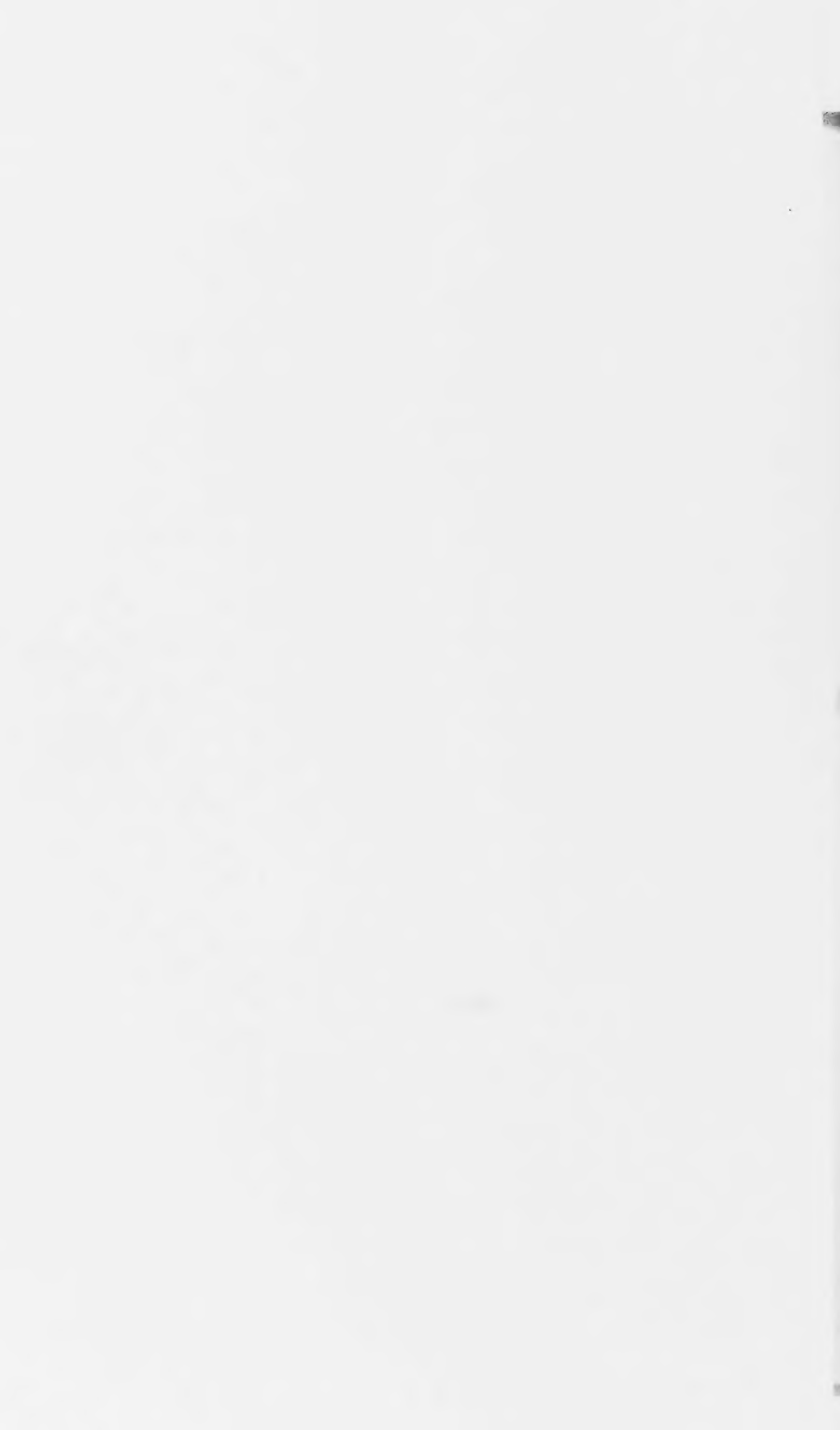
Board of Commissioners vs. Gas. Co., 121 Ark. 110.

Missouri Pacific Ry. Co. vs. Road District, 137 Ark. 568.

Wherein does this Suit in Equity (undoubtedly removable) differ from the proceedings in the County Court, especially in view of the fact that when the latter forum is available it affords an "adequate remedy at law" and the Suit in Equity will not lie?

St. Louis, etc., Ry. Co. vs. McLaughlin, 232 Fed. 579.

Chapman Dewey Land Co. vs. Road District, 127 Ark. 378.



Section 5433 provides that "The tax so levied shall be lien upon all the real property in the district from the time same is levied by the County Court, and shall be entitled to preference over all demands, executions, encumbrances or liens whatsoever created, and shall continue until such assessment with penalty and costs that may accrue thereon, have been paid. The remedy against such assessment and levy shall be by appeal, which may be taken as provided in Section 5424, and on appeal the presumption will be in favor of the legality of the tax."

In the instant case, it is interesting to note the form of the judgment confirming the assessment against the respondent's property which was entered by default at the County Court, after respondent's petition for removal had been filed, and which order, if said case was improperly removed, has now become "final, conclusive, binding and incontestable," since the thirty days in which a direct attack upon appeal have passed. The order is shown in the printed transcript of the record, pp. 35 to 37.

It recites the appearance of the petitioner in person and by attorney, and the default of all other parties; it recites the adjournment of the court to the day at which judgment is rendered; it recites the publication of warning order in the same manner as constructive service by publication in any default

proceeding in Arkansas; it recites in detail, matters of evidence and record which the Court considers, and recites as finding of the Court that the assessments are “justly and equitably made”, and in conclusion, “it is therefore considered, ordered and adjudged by the Court that said assessments of benefits made by the assessors for said District be, and the same is, hereby approved and confirmed by this Court.”

Not satisfied with thus foreclosing respondent's rights, a special clause is added for respondent's benefit, as follows:

“It is further considered, ordered and adjudged by the Court, that the assessment of benefits made against the St. Louis Southwestern Railway Company, and against the Louisiana & Arkansas Railway Company as to the line of railroads of said respective companies in said District by the Assessors for said District be approved and confirmed by the Court.”

It is strange that an ancient formula, peculiar to the common law courts, “considered, ordered and adjudged” by the Court should be used in the decision of an administrative board acting non-judicially.

It is stranger still that the judgment of that Court should be merely the order of an administrative board, although it is “final, conclusive, binding and

incontestable, except by direct attack upon appeal."

The following language which was used by Judge Amsdon, in a case involving the same question, *In re Stutzman County*, 88 Fed. 337, is peculiarly applicable to this case:

"It is difficult to appreciate the force of that reasoning which attaches to a proceeding in court as to its effect upon the rights of the parties, all the consequences of a suit, but for the purpose of determining the jurisdiction of the Federal Court, holds the same proceeding to be purely administrative."

In the *Upshur* case, the County Court had no judicial power (except probate), and the Legislature was prohibited from giving it any judicial powers. In the *Madisonville Traction Company* case and in the case at bar the County Court was a tribunal, ordained by the constitution of the states as a part of the judicial system, and although charged with some duties of an administrative character, is a judicial tribunal and a superior court of record.

Learned counsel for petitioner in his brief is somewhat exercised by the fact that the affirmance of the decision of the Circuit Court of Appeals will not only bring down a flood of litigation upon the Arkansas federal courts, but will also inconvenience and retard the development of public improvements within the State, especially in view of the large number of districts created by the General Assembly in 1919.

We concede that the fecundity in road district legislation at that session of the Arkansas Legislature will stand for years unequaled and unenvied. We concede, also, that if the people of the State had not arisen and put an end to the vast majority of these projects, and that if State courts in Arkansas continued their policy of enhaloing the assessments made by the boards of assessors of the various districts and of erroneously declining to revise the same, however excessive they might be, that many non-resident owners of property would have been compelled to seek protection of their constitutional rights in the federal courts. But where, under such circumstances, have the federal courts denied them relief because to do so might result in crowding their dockets?

Two instances of how convenient and desirable a thing it was, from the standpoint of the road districts for these intolerable conditions to continue, are shown in the case of the *Kansas City Southern Railway Company v. Road District No. 6*, decided by this court on June 6, 1921, and reported in 65 Law Edition, at page 16, *Advance Opinion No. 17*, July 15, 1921, p. 715, where a railroad was assessed nearly \$68,000.00 for the construction of a gravel road, and in which this Court held that the discrimination was so palpable and arbitrary as to amount to a denial of the equal protection of the law, and in the instant case wherein the Railroad Company was assessed \$50,-

000,00, substantially as much as the total of all city property within the district, and one-fourth as much as all the rural property within the district, comprising over seventy thousand acres. This assessment was by the District Court reduced to a little over \$10,000.00, or one-fifth of the original assessment.

If the railroad company had not the right to remove this cause to the federal court, the \$50,000.00 assessment will stand since it was made final after the filing of the petition for removal by an ex parte order of the County Court.

This case is not to be decided by the question of convenience or inconvenience of either of the parties hereto, or indeed, of the federal courts themselves. The issue before this Court is whether or not the District and Circuit Court of Appeals were in error in assuming jurisdiction of this case. If they were not, then this case will be affirmed, regardless of the convenience of anyone.

In conclusion, we submit that the determination of the amount by which the value of a given piece of property will be enhanced by the construction of a public improvement; that is, the amount of benefits thereto, is the determination of a juridical right and that the District Court would have had original jurisdiction of a suit involving that issue.

That the case at bar is a controversy between a municipal corporation upon the one hand, authorized

to sue and be sued, and a railroad corporation upon the other hand, the former demanding that a lien amounting to, in round numbers, \$50,000.00, be laid against the property of the railroad company to secure the payment of that sum of money by the railroad company to the district, and that, therefore, this proceeding is a contest inter partes between citizens authorized to sue and be sued in the courts of the United States, and,

That this proceeding at the time it was removed was pending in the County Court of Lafayette County, Arkansas, a tribunal empowered both by the constitution and the statutes of the State of Arkansas to hear and determine all questions of law and fact arising in this proceeding.

We therefore submit that this case meets all the requirements of a removable suit, that the District Court and the Circuit Court of Appeals did not err in overruling petitioner's motion to remand the same to the County Court of Lafayette County, Arkansas.

Respectfully submitted,

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J. R. TURNEY,

Attorneys for Respondent.

St. Louis, Mo., September 12, 1921.

APPENDIX.

"THE ALEXANDER ROAD LAW"

**Sections of Act 388 of Arkansas for 1915, involved
herein.**

Organization.

Section 1. Whenever a majority in land value, acreage or number of land owners within a proposed Road Improvement District in any county shall petition the County Court to establish a Road Improvement District to embrace a certain region which it is intended shall be embraced within the boundaries of the proposed district shall file a plat with said petitions upon which the boundaries of the proposed District shall be plainly indicated, showing the roads which it is intended to construct and improve as nearly as practicable, and shall also file a good bond conditioned that petitioners will pay all court costs and legal advertising that may accrue in the event said district is not established, it shall then be the duty of the County Court to give public notice by publication in some weekly newspaper having a bona fide circulation in said county by three consecutive insertions therein

that said petition has been filed, and giving a description of the territory embraced in said petition in as large subdivisions or calls as practicable, and calling upon all persons, firms, or corporations owning land or other real property within the proposed district to appear before the County Court on some date to be fixed by the Court not less than five days after last insertion of said notice to show cause for or against the establishment of said district. The original petition may be circulated among the land-owners, or such number of exact copies of same as may be deemed necessary may be circulated, and when all of said petitions are filed at or before the time of the hearing above mentioned the said petitions shall be consolidated and treated as one petition, if same are filed before or at the date of said hearing (Crawford and Moses Digest, Ark. Statutes, Sec. 5399).

Section 2. The County Court, at the hearing provided for in the preceding section, shall determine the sufficiency of said petitions, and if any person whose name appears on the petition shall, for any valid reason, desire to remove his name from said petition, he shall state his reasons therefor in writing, and any person who objects to the formation of said district shall present his objections in writing. If it appears to the County Court that the petition is signed by either a majority in land value, acreage, or in number of land-owners within the proposed district, and if the

County Court deems it to the best interest of the county and the land-owners in said district, it shall be the duty of the County Court to make an order establishing said district, such majority in acreage, number of land-owners, or majority in land value to be determined by the assessment for the purpose of general taxation in force in said county at the time, and if the County Court is of the opinion that any part, or parts, of the territory included in the petition and plat is not benefited by the proposed improvement the Court, may, in the order creating said district, eliminate such territory from the boundaries of this district. The petition may be signed by women who own real property, whether married or single; guardians may sign for their wards, and trustees, executors and administrators may sign for the estate represented by them, and, if the signature of any corporation is attested by the corporate seal, the same shall be sufficient evidence of the assent of the corporation to said petition. The words "real property," or "land," wherever used in this Act, shall include land, improvements thereon, railroads, railroad rights-of-way and improvements thereon, including public buildings, sidetracks, etc., and tramroads (C. & M. Dig., Sec. 5401).

Section 3. The order of the County Court establishing a Road Improvement District shall have the force and effect of a judgment and shall be deemed conclu-

sive, final and binding upon all territory embraced in said district, and shall not be subject to collateral attack, but only to direct attack on appeal (C. & M. Dig. 5402).

Any owner of real property within the district may appeal from said judgment establishing the district within thirty days by filing an affidavit for appeal, stating in said affidavit the special matter on which said appeal is taken, and any owner of real property may likewise appeal from the order of the County Court refusing to establish such district or eliminating any territory therefrom. No appeal shall delay the proceedings for carrying out the proposed improvement after the order of the County Court establishing same is made, and any party appealing within the time herein prescribed shall be deemed to have waived any objections he may have to said order, and to have relinquished all rights he may have had to question same (C. M. Dig. 5403).

Section 4. When the County Court makes an order establishing a road improvement district, it shall also make an order declaring the same to be, and to exist, under the name of Road Improvement District (name and number) of . . . County, Arkansas, and said district shall then become a body politic and corporate by said name and may sue and be sued, plead and be pleaded, and have perpetual succession for the purpose of building, constructing, maintaining and re-

pairing the roads in said district (C. & M. Dig. 5404).

The County Court, at the same time, shall also appoint three persons, owners of real property in said district and men of business ability, to act as commissioners for said district (C. & M. Dig. 5405).

Assessment of Benefits.

Section 9. As soon as the commissioners have formulated the plans for the district, and shall have ascertained the cost thereof, they shall report same to the County Court and file the official plans for said district in the office of the County Clerk. The County Court shall at its first regular, special or adjourned term held thereafter, appoint three owners of real property within said county, who shall constitute the Board of Assessors for said district (C. & M. Dig. 5419).

Section 10. The Board of Assessors shall meet at a time within thirty days, to be designated by the president of the Board of Commissioners, and shall take the oath prescribed in Section 20, Article XIX of the Constitution of Arkansas, and shall also swear that they will well and truly assess the benefits to be received by each land-owner by reason of the improvement as affecting the lands or other property in said district, which oath shall be filed with the county clerk of the county and duly recorded in the proceedings for the

district. A majority of the assessors shall constitute a quorum for the transaction of business. If any person appointed by the Court as assessor shall fail or refuse to take the oath within thirty days, he shall be deemed to have declined to serve, and his place shall be filled by the County Court appointing another person to fill the vacancy. The said appointment may be made by the County Judge in vacation or at a regular, special or adjourned term of said court. The assessors shall hold their office until the work is completed or until they are removed by the County Court for any good reason, and shall receive as compensation for their services a sum to be fixed by the commissioners and approved by the County Court, not to exceed five dollars per day (C. & M. Dig. 5420).

Section 11. The assessment of benefits shall be made by the assessors in a book bound in permanent form and furnished by the district and at such a time as directed by the Board of Commissioners.

The assessors shall assess the benefits to be received by the several and particular tracts of land, railroads, tramroads and other real property within the district by reason of the improvement. All lands embraced in said district shall be entered upon said book in convenient subdivisions, as surveyed by the United States, and appearing upon the assessment books in force at the time in said county in appropriate columns showing: (1) name of the owner; (2) subdivision of land;

(3) number of acres; (4) present assessed value; (5) assessed benefits per acre; (6) assessed benefits to each tract, and, if it be a railroad, or tramroad, the name of the owner thereof, the supposed mileage in said district, the present assessed value of said railroad and other property belonging to said company, and the amount of assessed benefits per mile, and the total amount of the benefit assessed against said railroad or tramroad, and no error in the name of owners or description of property shall invalidate said assessment if sufficient description is given to identify same, and any error or mistake in making said assessment may be corrected at the hearing hereinafter provided for (C. & M. Digest 5421).

Section 12. The assessors shall also assess the damages accruing to any owner of real property, if any, in the same block in which the assessment of benefits is made, and said damages may be paid out of the funds of the district, or by a reduction in the assessment of benefits in proportion to the amount of the damages sustained by reason of right-of-way taken, or other damages sustained (C. & M. Dig. 5422).

Section 13. As soon as the assessors have completed the work of assessment for the district, they shall certify to same and deliver it to the Board of Commissioners. The commissioners shall immediately file same in the office of the County Clerk, and the County Clerk of said county shall give public notice by two consec-

tive insertions in a publication having a general circulation in said county. Said notice shall give a description of all lands embraced in said district in the largest subdivision practicable and shall state that said assessment of benefits and damages has been filed in said office and shall call upon any person, firm or corporation aggrieved by reason of any assessment to appear before the County Court on some date to be fixed by the court not less than five days after the last insertion therein, for the purpose of having any errors adjusted, or any wrongful or grievous assessment corrected and all grievances or objections to said assessments shall be presented to the court in writing. Any person who is damaged by reason of said improvement may appear before said court at the same time for the purpose of having the assessment of damages adjusted. The County Court shall hear and determine in justness of any assessment of benefits or damages, and is hereby authorized to equalize, lower or raise any assessment upon a proper showing to the court (C. & M. Dig. 5423).

Section 14. At the hearing provided for in the preceding section and after the County Court shall have considered the assessment of benefits, it shall enter its findings thereon, either confirming the assessment of benefits against said property, increasing or diminishing same, and the order made by the County Court shall have all the force and effect of a judgment

against all real property in said district, and it shall be deemed final, conclusive, binding and incontestable except by direct attack on appeal (C. & M. Dig. 5424).

Any owner of real property within the district may appeal from the judgment fixing the assessment of benefits of damages within ten days by filing an affidavit for appeal and stating therein the special matter appealed from, but such appeal shall affect only the particular tract of land or other real property concerning which said appeal is taken, and on appeal only the special matters set up in said affidavit shall be considered by the Circuit Court.

If no appeal is taken within that time such judgment shall be deemed final, conclusive and binding upon all real property in the district, and the owners thereof, and said assessment of benefits shall not be subject to collateral attack.

The Board of Commissioners, on behalf of the district, or any owner of real property therein may likewise appeal from and order of the County Court refusing to enter such judgment, and said County Court may be compelled by mandamus to enter such judgment (C. & M. Dig. 5425).

Lien of Assessment.

Section 19. The County Court shall, at the same time that the assessment of benefits is filed by the commissioners for said district, enter upon its record an

order which shall have all of the force and effect of a judgment, providing that there shall be assessed upon the real property in the district a tax sufficient to pay the estimated cost of the improvement with ten per cent added for unforeseen contingencies, which tax is to be paid by the real property of the district in proportion of the amount of the assessment of benefits thereon, and which is to be paid in annual installments payable not to exceed twenty per cent for any one year, as provided in such order (C. & M. Dig. 5432).

The tax so levied shall be a lien upon all of the real property in the district from the time same is levied by the County Court, and shall be entitled to preference over all demands, executions, incumbrances or lien whatsoever created, and shall continue until such assessment with penalty and cost that may accrue thereon have been paid. The remedy against such assessment and levy shall be by appeal, which may be taken as provided in Section 9119, and on appeal the presumption will be in favor of the legality of the tax. Any owner of real property within the district may by mandamus compel a compliance by the County Court with the terms of this section (C. & M. Dig. 5433).

Section 20. It shall be provided by resolution of the Board of Commissioners that the local assessments of benefits shall be paid in successive annual installments, so that no local assessment shall in any one year ex-

ceed twenty per cent of the benefits assessed against said real property. The resolution of the commissioners shall be made for the whole period during which the assessments are to be collected, and they shall transmit to the County Clerk a copy of this resolution before September first each year. The resolution shall state the per cent of the benefits to be extended on the county tax books and collected by the collector each year along with the other taxes. When the resolution is filed with the County Clerk, he shall extend the amount of tax provided for in said resolution of the board, along with the other taxes to be extended, and shall receive as compensation for his services an amount equal to that received for similar services performed for the county, and said amount shall be paid out of the fund of said road improvement district. In paying the tax provided for herein, or any costs or penalty thereon, as between grantor and grantee, all payments not due at the time of the transfer shall be payable by the grantee (C. & M. Dig. 5431).

Enforcement of Assessments.

Section 25. If the assessment of the district as certified to by the Clerk of the County Court to the collector shall not be paid by the time fixed by law for the payment of county taxes, a penalty of twenty-five per

cent shall attach for such delinquency and the Board of Commissioners shall institute proceedings in the Chancery Court for said county to enforce the collection of said delinquency, and said court shall give judgment against said lands and the real property for the amount of such taxes and said penalty of twenty-five per cent and the interest on the same for the expiration of the time for the payment of same to the collector at the rate of six per cent per annum and for all cost of said proceedings. Such judgment shall provide for the sale of said delinquent lands for cash by a commissioner of the court after advertisement, as hereinafter set forth. Said proceedings and judgment shall be in the nature of a proceeding in rem, and it shall be immaterial that the ownership of said lands be incorrectly alleged in said proceedings, and said judgment shall be enforced wholly against the lands and not against any other property of said defendant. All or any part of said delinquent lands or real property within the district may be included in one suit instituted for the collection of said delinquent taxes, penalty and cost, as aforesaid, and notice of the pendency of each suit shall be given by publication weekly for two consecutive weeks before judgment is entered for the sale of said lands in some newspaper in said county having a general circulation therein. Said notice may be in the following form: The complaint above referred to need not allege minor de-

tails of organization of the district or the manner of making or levying the assessments or benefits, but may allege generally the organization of said district and that the taxes sought to be foreclosed is past due and unpaid (C. & M. Dig. 5437).

Section 26. At the first regular or adjourned term of the Chancery Court after said notice shall have been published for three consecutive weeks and not earlier than five days after the last insertion of said notice such suit shall stand for trial, unless a continuance is granted to a delinquent for some good cause shown, in the discretion of the Court, and such continuance shall not affect the Court's duty to proceed with the delinquents as to whom no continuance was granted, and in all cases where said notice has been published as aforesaid, and no answer filed, or where answer is filed and the cause decided for the plaintiff, the Chancery Court by its decree shall grant the relief prayed for in the complaint, and shall tax as part of the cost a reasonable attorney's fee for the plaintiff, and shall direct said commissioner to sell the land described in the complaint at the front door of the county court house to the highest and best bidder for cash in hand, after having first advertised such sale (such advertisement shall include all lands embraced in said decree) for two weeks consecutively in some newspaper published

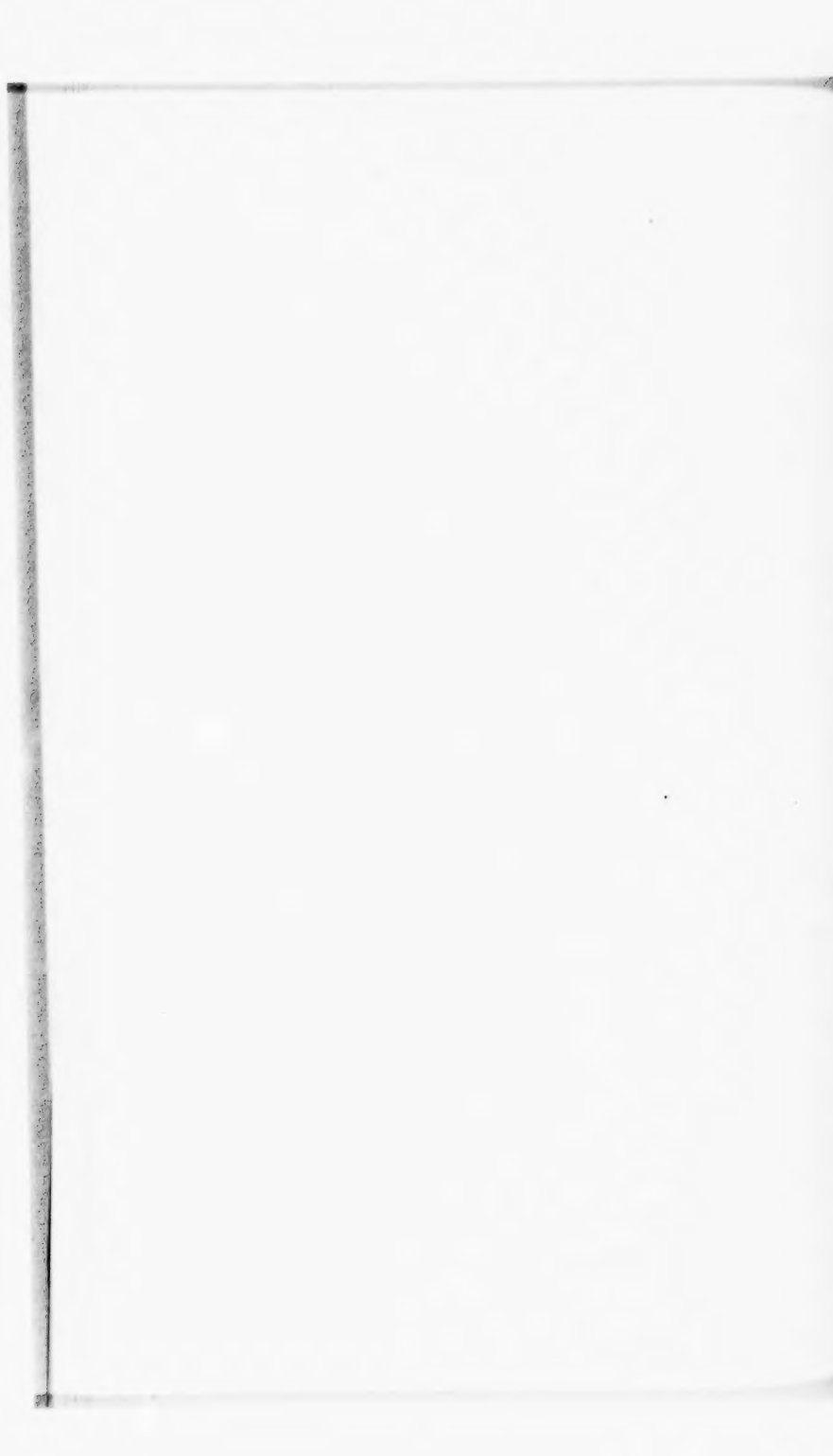
in said county, and if all lands be not sold on the day as advertised, such sale shall be continued from day to day until completed, and said commissioner shall by proper deed convey to the purchaser as against all others whomsoever, saving to infants and insane persons having no guardian and curators, the rights they now have by law to appear and except to such proceedings within twelve months after their disabilities. The commissioner conducting such sale shall be allowed a reasonable fee, to be fixed by Chancery Court, which shall be taxed as cost in the case. The commissioner shall keep an accurate list of all lands sold, and shall account to the Board of Commissioners for all money derived from the sale of delinquent lands (C. & M. Dig. 5438).

Section 27. Said suit shall be conducted in the name of the road improvement district and in accordance with the practice and procedure of the Chancery Court of this state, except as herein otherwise provided; but neither attorneys ad litem, nor guardians ad litem, nor any other provisions of Section 7694 be required, and said suit may be disposed of on oral testimony as in ordinary suits at law, and this Act shall be liberally construed to give to said assessment and tax list the effect of bona fide mortgages for a valuable consideration, and a first lien upon said lands and real property as against all persons, firms

or corporations having an interest therein; provided, that no informality or irregularity in holding any meeting provided for herein or in any description, valuation or assessment of the property, or in the name of the owner, number of acres or manner of assessment shall be valid defense to such action (C. & M. Dig. 5439).

Appeals Affect Land of Appellant Only.

Section 39. No appeal shall delay the proceeding for carrying out the improvement herein contemplated, and when an appeal is taken said appeal shall only affect the particular land or other real property owned by the person appealing, and if upon the determination of said appeal the party so appealing shall be unsuccessful, then all court cost and necessary expenses of said appeal shall be paid by him (C. & M. Dig. 5461).



No. [REDACTED]

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Office Supreme

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WM. R. STA

IN THE
Supreme Court of the United States

OCTOBER TERM, 1921.

On Writ of Certiorari to the United States
Circuit Court of Appeals, Eighth Circuit,
in Nos. 5454 and 5470.

COMMISSIONERS OF ROAD IMPROVEMENT
DISTRICT No. 2 OF LAFAYETTE COUNTY,
ARKANSAS, PETITIONERS,

VS.

ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, RESPONDENT.

REPLY BRIEF FOR PETITIONERS.

HENRY MOORE, JR.,
*Attorney for Commissioners of
Road Improvement District
No. 2 of Lafayette County,
Arkansas.*

No. 552.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1921.

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COMPANY, RESPONDENT.

BRIEF.

We wish to direct the attention of the court to certain issues raised in the respondent's brief as follows:

A trial should be had to determine the benefit received by respondent.

In the original brief we have printed Section 1246 (Jud. Code, Section 269, as amended, Act Feb. 26, 1919, c 48) to the effect that on the hearing of any appeal the court, upon an examination of the entire record, shall give judgment without regard to technical errors or defects, which do not affect the rights of the parties.

The Circuit Court of Appeals found that the trial court was mistaken when it said there was no disputed question of fact in the case and found that the real question for decision was as to the amount of benefits to be assessed against the railroad company, but did not reverse the case for this error since the District Court on its own motion withdrew the cause from the consideration of the jury without objection being made by either the plaintiff or defendant.

Section 914 of the Revised Statutes is as follows:

"Practice and proceedings in other than equity and admiralty causes. The practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the Circuit and District Courts, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the Courts of Record of the state within which such Circuit or District Courts are held, any rule of court to the contrary notwithstanding."

It has been definitely decided by the Supreme Court of Arkansas that a tax payer is not entitled to a trial by jury on the question of assessments levied for an improvement district.

"It is contended in the first place that the court erred in refusing to grant a trial of the cause before a jury. That question has been determined contrary to the contention of counsel in the recent case of *Drew County Timber Co. v. Board of Equalization*, 124 Ark. 569, where we held that the right of trial by jury, 'is confined to cases which at common law were triable before the adoption of the constitution,' and that a tax payer aggrieved by the action of the county board of equalization may appeal to the County Court and thence to the Circuit court, but has no right to trial by jury."

Mo. Pac. Railroad Co. v. Conway Bridge Dist.,
134 Ark. p. 298.

As both the counsel for plaintiff and defendant were of the opinion that the decision of the Arkansas Court must be followed by the Federal District Court, since this is not a proceeding in equity, it was believed and still appears to counsel to be the law, that the U. S. District Court in its discretion could hear this cause without the aid of a jury, and therefore no objection was made by either side, when the court on its own motion withdrew the case from the jury.

Since it is found that the District Court was in error in holding there was no disputed question of fact and since the Court of Appeals under said Section 1246 is required to give judgment without regard to technical errors or defects, this cause should be reversed, so there may be a decision upon the question of fact as to the amount of benefits received by the respondent, railway company, from the building of said road.

No discrimination was made against respondent.

Respondent refers on page 34 of its brief to the case recently decided by this court, *The Kansas City Southern Railroad v. Road District No. 6*, decided June 6th, 1921, and reported in 65 Law Edition, p. 16.

Said respondent cites the facts of that case and of the present case as showing alleged discrimination in the assessment against the St. Louis Southwestern Railway Co.

The Kansas City Southern Railway Co., appellant in the case above referred to, and the respondent, St. Louis Southwestern Railway Co., are both through trunk lines, and are assessed by the tax commission of Arkansas at approximately the same sum per mile. In the Kansas City Southern Railway case, the benefit on account of the proposed road was levied at the rate of \$7,000.00 per mile of main track. In the instant case, said benefit levied is \$2,000.00 per mile of main track.

The District Court held that only the naked land of the railway company could be assessed for road purposes, and said court placed an assessment of \$54.00 per mile against the railroad in the country and \$2400.00 per mile against the same road in the incorporated towns. Transcript, page 233.

The assessors had classified the three classes of property for road purposes as rural land, urban property and railroad track; and the right to make such a classification, if reasonable, has been upheld in innumerable cases, particularly the Kansas City Southern Railroad Case above

referred to, which cites *Royster Guano Co. against Virginia*, 253 U. S. p. 412.

Said Kansas City Southern Case upholds the right to assess according to value, position, acreage or the front foot rule. For the information of this court below find a tabulated statement of the various classes of property within the road district.

Rural Lands.

County and State Assessment.....	\$364,080.25
Benefits assessed for road.....	212,103.00
Percentage	58.25%

Urban Lands.

County and State Assessment.....	\$383,270.00
Benefits assessed for road.....	54,490.00
Percentage	15%

Louisiana & Arkansas Ry. Co.

County and State Assessment.....	\$119,350.00
Benefits assessed for road.....	20,080.00
Percentage	16.75%

St. Louis Southwestern Ry. Co. (Cotton Belt)

County and State Assessment.....	\$581,960.00
Benefits assessed for road.....	49,606.50
Percentage	8.50%

Transcript, page 192.

Said assessments were accepted by every single property owner and by the Louisiana & Arkansas Railroad Co. The single exception being that of the respondent.

Should the assessment of benefits be made according to value instead of using the classification as above set forth, the respondent's assessment would be more than doubled. Should the reduction in assessment as allowed by the U. S. District Court stand, the respondent, would pay only on the basis of 1-3 4% of its assessed valuation. The above percentage shows how absurd is the contention of the respondent that it has been discriminated against.

Decision of state court is final in the construction of its constitution and statutes.

At page 6 of its brief the respondent states "It would seem strange indeed, if the question of the right to remove could be concluded and determined by the decision of the State Court.

The United States Courts are necessarily tribunals to determine matters of this kind."

Until a decision was rendered by the Supreme Court of Arkansas construing the powers of the County Court under the Arkansas Constitution, the Federal Courts could determine for themselves what such powers might be, however, since prior to the decision in this cause the Arkansas Supreme Court has settled definitely the question at issue, holding that the County Court acts in matters of local assessments in an administrative and not in a judicial capacity, such decision of the highest court of the state constructing its own constitution and statutes is binding upon this court.

As stated in a recent case referring to a decision in reference to the Missouri State law "So far as the judgment of the Supreme Court of Missouri turns upon matters of state law, it is conclusive." *Mount St. Mary's Cemetery Association v. Mullins*, 248 U. S., page 501. 63 Law Edition, page 386.

For complete discussion as to the duty of the U. S. Courts to follow the decisions of State Courts in reference to the state constitution and statutes, see cases cited in the *U. S. Ex Rel. Pierce v. Cargile*, 258 Federal, page 458.

In the case at issue the county court acted in an administrative capacity.

At page 22 of respondent's brief he states that the quotations at pp. 22 & 23 of petition for writ of certiorari are misleading in that the section of the present Constitution of Arkansas granting jurisdiction is omitted and the provision of the Constitution of 1868 substituted, which error respondent states has been corrected in petitioner's second brief, p. 20.

In order that the court may not be misled, and to be perfectly fair, we below print the sections in question from both the constitution of 1874 (the present Constitution of Arkansas), and also the Constitution of 1868, with sections of the act of the legislature, which were made binding on the County Court under Section 22 of the schedule of the present constitution.

Citation from the constitution of Arkansas of 1874.

"County Courts shall have exclusive original jurisdiction in all matters relating to county taxes, roads, bridges, ferries, paupers, bastardy, vagrants, and the apprenticeship of minors, the disbursement of money for county purposes and in every other case that may be necessary to the internal improvements and local concerns of the respective counties."

Section 28, Article 7.

"The judge of the County Court shall be the judge of Probate, and have such exclusive original jurisdiction in matters relative to the probate of wills, the estates of deceased persons of unsound mind and their estates as is now vested in the Circuit Court, or may be hereafter prescribed by law. The regular terms of the Court of Probate shall be held at the times that may hereafter be prescribed by law."

Section 34, Article 7.

"The County Courts provided for in this constitution shall be regarded in law as a continuance of the board of supervisors now existing by law."

Section 23 of the Schedule of the Constitution of the State of Arkansas.

Constitution of 1868.

"The judicial power of the state shall be vested in the senate, sitting as a court of impeachment, and the Supreme Court, Circuit Courts, and such other courts inferior to the Supreme Court as the general assembly may from time to time establish."

Section 1, Article 7.

The board of supervisors, under the Constitution of 1868, of which the present County Court is a continuance in accordance with Section 23 of the Schedule of the present Constitution of Arkansas was constituted and exercised the administrative functions as shown by the following quotations from Gantt's Digest of the Rev. Statutes of Arkansas. The law in question having been passed April 3rd, 1873, and being the one referred to under Section 23 of the Schedule of the present constitution above quoted. The following sections are from Gantt's Digest published by authority of the State of Arkansas in the year, 1874.

Sec. 575. A board of supervisors, to consist of three members, is hereby established in each county.

Sec. 585. A majority of the board shall constitute a quorum for the transaction of business.

Sec. 587. In case a quorum shall not attend on the first day of any regular or special session of said board, the sheriff shall adjourn the same until the next succeeding day; and if, at twelve o'clock M. on the second day, no quorum shall be present, the sheriff shall adjourn the board until the day fixed by law for its next regular session.

Sec. 590. The president of the board may call a special session thereof whenever, in his judgment it may be necessary, upon his giving five days' notice of said session, by advertisement posted at the door of the court house of his county, and causing a copy thereof to be delivered to or left at the residence of each member of said board.

Sec. 591. The county clerk shall, by virtue of his office, be clerk of the board of supervisors for his county.

Sec. 593. The seal prescribed by law to be kept and used by County Courts shall be the seal of the board of supervisors, and shall be used by the clerk thereof for the authentication of any record, process, or proceeding heretofore required by law to be authenticated by the seal of the county: *Provided*, that each board may procure a seal, to be styled the seal of County.

Jurisdiction.

Sec. 595. Such board shall have and exercise the following powers and jurisdiction:

First. In all matters relating to county taxes, equalization of assessments on all real and personal property, appropriation of money for county purposes, and in any other case that may be necessary for internal improvement and local concerns of the county.

Second. To appoint viewers, reviewers, and overseers of the roads, and designate justices of the peace to apportion hands to work on roads.

Third. To order the erection of bridges and direct the repairing of same.

Fourth. The superintendence of all paupers.

Fifth. To grant peddlers' grocery, ferry and other licenses provided for by law.

Sixth. To audit, settle, and direct the payment of all just demands against the county.

Seventh. To have control and management of the property, real and personal belonging to the county.

Eighth. To have full power and authority to purchase or receive, by donation any real or personal property for the use of the county, and to cause to be erected all buildings necessary for the use of the county.

Ninth: To sell and cause to be conveyed any real estate or personal property belonging to the county, and appropriate the proceeds of such sale for the use of the same.

Tenth. To contract for the erection of toll and other bridges and causeways.

Eleventh. To have and exercise such other powers and jurisdiction as is now vested by law in the County Courts of the several counties.

Sec. 596. The board shall possess all the powers and is authorized and required to perform all such acts and duties, not in conflict with the provisions of this act, as were heretofore required to be done and performed by County Courts.

Sec. 597. The board of supervisors, for an interruption of their proceedings, or any contempt offered them while in session, shall have power to impose a fine not exceeding fifty dollars, and to imprison the offender for each offence, not exceeding twenty-four hours.

Sec. 598. Said board of supervisors shall constitute the county board of equalization, and shall perform all duties required to be performed by said board of equalization in the manner and at the time now provided by law.

Section 599. The president of the board of supervisors shall have power, in vacation, to approve any bond requiring the approval of the board by law, which bond, so approved by the president, shall be submitted to the board at its next regular meeting for their approval or rejection, and if rejected a new bond and surety shall be given.

From the above it will be noted that the County Court at this time as constituted had three members instead of one as at present, being the same number of

members as constituted the County Court of West Virginia when the Upshure case was heard. The present constitution changed the number from three to one and calls this one, not a supervisor, but County Judge, however, in accordance with Section 23 of the present constitution, the County Court as now provided for, is in law a continuance of the board of supervisors formerly existing under the Constitution of 1868.

The Supreme Court of Arkansas has decided in the case of *M. P. Railroad Co. v. Izard County Highway Imp. Dist.*, 143 Ark., p. 261, that the County Court in passing upon the question of the amount of legal assessments for improvement districts is acting in an administrative capacity, and it is our contention that the present County Court and the former board of supervisors, and also the County Court of West Virginia, as detailed in the Upshure case, are bodies of like powers and authority, and we believe the decision of the Arkansas Court is fully sustained by this Honorable Court in said Upshure case.

For the reasons set forth in petitioner's original brief, which are confirmed by excerpts and citations in this reply brief, this cause should be reversed and remanded to the County Court of La Fayette County, Arkansas.

Respectfully submitted,

Commissioners Road District, No. 2,
La Fayette County, Arkansas,
Petitioners,

By HENRY MOORE, JR.,
Attorney.

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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

COMMISSIONERS OF ROAD IM- PROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY, ARKANSAS,	}	Petitioners,
vs.		
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,	}	Respondent.

**RESPONDENT'S BRIEF ON MOTION FOR
WRIT OF CERTIORARI.**

STATEMENT OF FACTS.

The following statement of the facts is that made by the Circuit Court of Appeals, 256 Fed. 524, with the exception of the two sentences enclosed within brackets which were inserted by us:

"This is a suit brought by the Commissioners of Road Improvement District No. 2 of Lafayette

County, Arkansas, hereafter called plaintiffs, against the St. Louis Southwestern Railway Company, hereafter called defendants, to recover the sum of \$49,765.80, being the amount assessed as benefits by the Board of Assessors of said district against the real estate, buildings and roadbed of defendant situated therein. The proceeding out of which this suit originated was commenced by the organization of the district under what is known as "the Alexander Road Law" of Arkansas. [Upon its organization, the district under the terms of the act became 'a body politic and corporate' and might 'sue and be sued, plead and be impleaded' and 'have perpetual succession,' etc.] After the organization of the district the County Court appointed three persons to act as commissioners. These commissioners formulated plans, ascertained the cost of the improvement, and filed the same in the office of the County Clerk. Thereupon the County Court appointed three persons to act as a board of assessors for said district [whose duty it became to assess the benefits accruing to and damages suffered by property in the district by reason of the improvement]. The persons appointed as assessors met at a time designated by the president of the Board of Commissioners and assessed the benefits which in the judgment of said board would be received by the defendant by reason of the improvement contemplated, as it would affect the lands and other property of defendant in said district. This assessment amounted to the sum sued for in this suit as above stated, and the same was duly certified by said Board of Assessors to

the Board of Commissioners. The commissioners certified and filed the same in the office of the County Clerk. The County Clerk gave public notice as provided by law and therein stated that said assessment of benefits had been filed in his office and that any person, firm or corporation aggrieved by reason of any assessment therein made should appear before the County Court on a date to be fixed by the court for the purpose of having any errors adjusted or any wrongful or grievous assessment corrected, and that all grievances or objections to said assessments should be presented to said court in writing. On the 22nd day of May, 1918, the County Court of Lafayette County, Arkansas, fixed June 28, 1918, as the date for hearing all exceptions of persons, firms or corporations to the assessment of benefits as made by the Board of Assessors of said district. On June 27th, the day before the hearing fixed by the County Court, the defendant duly removed the case against it to the United States District Court for the Western District of Arkansas, on the ground of diversity of citizenship. A motion to remand the case to the County Court was made in the court below by the plaintiffs on the ground that the proceeding was not a suit. The motion was denied. This ruling and the reduction of the amount of benefits are assigned as errors by the plaintiffs. The defendant assigns as error the refusal of the court below to further reduce the amount of benefits. After the motion to remand was denied the case subsequently was brought to trial upon the assessment of the Board

of Assessors as certified to the County Court by the Board of Commissioners, the amended exceptions of the defendant to said assessment, and the reply to said exceptions by the plaintiff.

"The defendant alleged, among other things, that the assessment was excessive and exorbitant and greatly and substantially exceeded the benefits which would be received by defendant's property by reason of the construction of the contemplated improvement; that said assessment was arbitrary and discriminatory as compared with the assessment made by the Board of Assessors upon other property within the district; that the maximum benefits which the property of defendant would receive by reason of the construction of the contemplated improvement would not exceed \$3,009.21, and that to the extent that the assessment of \$49,765.80, exceeded said sum of \$3,009.21, the assessment was unreasonable and arbitrary and would deprive the defendant of its property without due process of law. The trial was commenced before the District Court and a jury duly impaneled, but subsequently the Court, of its own motion, withdrew the cause from the consideration of the jury for the alleged reason that there was no disputed question of fact, whereupon the plaintiffs and the defendant making no objection to the action of the Court in withdrawing the case from the jury each asked the Court to make certain findings of fact and conclusions of law which are set forth in the record. The Court did not adopt the findings of either party, but made findings of fact and conclusions of law of its own, and entered a judgment thereon against the defendant in the sum of \$10,485.48."

The Court of Appeals, in affirming the judgment of the District Court, held:

(1) That the making of the assessment of benefits and damages by the Board of Assessors and the certification thereto by the Board of Commissioners were *ex parte* proceedings by administrative officers, but that the filing of the assessment list in the County Court by the Road District was, in effect, the filing of a complaint; the warning order which was issued against the defendant and others, upon order of that Court, process; and that the proceeding, therefore, became a suit *inter partes* between the district and the railroad, prosecuted in a "Superior Court of Record" invested with jurisdiction thereof by the State Constitution, and that the controversy was, therefore, a removable suit.

(2) That the parties had, by their actions, waived a jury in the Federal District Court without complying with Section 649, U. S. R. S., and that, therefore, the Appellate Courts were without jurisdiction to review questions other than those arising upon the process, pleadings, or judgment, of which there were none.

BRIEF.

The petition for the writ of *certiorari* is (pp. 16 and 17) predicated upon four reasons or grounds. The first, second and third of these grounds relate to petitioner's first assignment of error and will be considered together.

The first reason alleged is "That the Circuit Court of Appeals declined to follow *Upshur County v. Rich*, 135 U. S. 467, 34 L. ed. 198"; the second and third, that there is great uncertainty as to the jurisdiction of the Federal Courts in cases of this kind due to the fact that subsequent to the decision in this case the State Supreme Court, in *Railway Co. v. Izzard County*, 220 S. W. 452, upon the alleged authority of the *Upshur case*, *supra*, held that a case of this kind was not removable.

It is obvious that if the decision of the Court of Appeals in this case did follow the *Upshur case*, *supra*, any "uncertainty" as to the Federal Courts' jurisdiction is due to the State Court's misapprehension of the decision in the *Upshur case*, and would be finally and most expeditiously dispelled by the denial of the petition.

It therefore becomes necessary to inquire (1) as to the principles laid down in the *Upshur case*, and (2) their application to the facts in the case at bar.

The principles laid down in that case are thus stated by the Court at page 476:

“The principle to be deduced from these cases is, that a proceeding, not in a court of justice, but carried on by executive officers in the exercise of their proper functions, as in the valuation of property for the just distribution of taxes or assessments, is purely administrative in its character, and cannot, in any just sense, be called a suit; and that an appeal, in such a case, to a board of assessors or commissioners having no judicial powers, and only authorized to determine questions of quantity, proportion and value, is not a suit; but that such an appeal may become a suit, if made to a court or tribunal having power to determine questions of law and fact, either with or without a jury, and there are parties litigant to contest the case on the one side and the other. * * *

Those principles are so clearly stated that there should be no great difficulty in comparing their application by the Supreme Court to the facts in the *Upshur case* with the application of the same principles made by the Court of Appeals to the facts in this case, having regard to the two considerations which the Supreme Court held to be determinative, to wit: (1) Was there a judicial issue between the parties? and (2) Was it pending in a judicial tribunal?

In the *Upshur case* the proceeding was initiated by

an *ex parte* petition of a taxpayer addressed to the administrative board of the county, praying that the assessed value of his property as returned by the County Assessor be reduced. The issue was the valuation of the property for taxation.

The proceeding in the case at bar was initiated in a constitutional court of the State, vested, as we shall hereafter see, with judicial as well as administrative powers, by the filing of an appraisement of the amount of damages and benefits caused by the public improvement and praying (by necessary implication) that the same be found to be correct, and declared a paramount lien upon defendant's property, upon which complaint process was issued, a trial between the road district upon the one hand and the property owners, separately had, and a "judgment" rendered which was "final, binding and conclusive, and subject only to direct attack upon appeal", which judgment was to "be a first lien" upon defendant's property. There can be no doubt, therefore, that such a controversy was *inter partes*.

That an issue of the amount of damages suffered and benefits received from the construction of a public improvement is a juridical one, involving questions of both law and fact, would seem to be so self-evident that the citation of authority would be superfluous, yet, in view of the fact that the State Court's decision

in *Railway v. Izzard County*, *supra*, is predicated almost entirely upon the contrary opinion, we feel it proper to burden the Court with the following authorities:

The proceeding involved in the case of *Union Pacific Railroad Company v. Kansas City* (Pacific Railroad Removal Cases), 115 U. S. 1, 29 L. ed. 319, was one to widen and improve a city street. The initial assessment of benefits and damages was made by the Mayor and a jury—a preliminary inquest by the officers of the municipal corporation in all respects similar to the assessment in the case at bar by the Board of Assessors. From the initial proceeding the railroad appealed to the Circuit Court of the State from which it removed the case to the Federal Court. The issues and their determination are thus stated by the Supreme Court:

“What, then, is the relation in which the Railway Company, as an appellant, stands towards the City of Kansas in this litigation? Clearly, it has two distinct issues, or grounds, of controversy: first, the value of its property taken for the street; secondly, the amount of benefit which the widening of the street will create to its remaining property not so taken; * * * third, the right of the city to open a street at all across its depot grounds. Now, this controversy involving these three issues is a distinct controversy between the company and the city. * * * ‘This controversy is to all intents and purposes a suit.’

The indirect effect upon the general proceedings for widening the street which would ensue in case the Federal Court should determine that the City of Kansas had no right to widen the street in the company's depot grounds, or that the valuation of its property was much too small, or the assessment for benefits against it was much too large, furnishes no good reason for depriving the company of its right to remove its suit into a United States court. We think that the case was removable to that court under the Act of March 3, 1875." * * *

The same rule is stated and applied in the following cases:

- Mississippi & R. R. Boom Co. v. Patterson, 98 U. S. 403, 25 L. ed. 206;
- Searl v. School District, 124 U. S. 197, 31 L. ed. 415;
- Madisonville Traction Co. v. St. Bernard Mining Co., 196 U. S. 239, 49 L. ed. 462;
- Smith v. Douglas County, 254 Fed. 244;
- Jarneeke Ditch, 69 Fed. 161;
- Re Stutsman County, 88 Fed. 337;
- Terre Haute v. R. R. Co., 106 Fed. 545;
- Drainage District No. 19 v. Ry. Co., 198 Fed. 253;
- Re Mississippi Power Co., 241 Fed. 194;
- C. M. & St. P. Ry. Co. v. District No. 8, 253 Fed. 491.

We rely upon these authorities to establish conclusively the principle that the issue before the County

Court was a juridical one *inter partes* and that if that tribunal were a court having judicial powers to determine questions of law and fact then this case is controlled by the decision of this Court in the *Pacific Removal cases, supra*.

In the *Upskur case* the Court stated that the Constitution of West Virginia of 1872 conferred judicial powers upon the county courts, but that by an amendment in 1880 its judicial powers were withdrawn except in matters of probate. By the same amendment it was provided that the "county courts should be composed of three commissioners", upon whom "was conferred "*jurisdiction*" in matters of probate, but "*superintendence and administration* in internal police, etc.," and the Legislature was authorized to confer other powers upon it "not of a judicial nature". The order which could be made by the "county court" of West Virginia was not one from which an appeal would lie to the courts constituting the judicial system of the State, but was an administrative order reviewable by the courts only by collateral attack.

Low v. County Court, 27 W. Va. 785.

Under these circumstances the Supreme Court held that the so-called "county court" was a court in matters of probate alone and that in all other matters "it was an administrative board charged with the management of the county affairs".

That the situation in the instant case is wholly different is shown by the Constitution of the State. In this connection we regret that we are compelled to point out that the quotations from the State Constitution set out at pages 8 and 9 of the petition for writ of *certiorari*, and at pages 22 and 23 of the brief thereon, are unintentionally misleading, in that the sections of the *present constitution* granting jurisdiction are omitted and the provisions of the former Constitution of 1868 substituted. This fact renders a more extensive quotation from the present Constitution than would otherwise be necessary.

Section 1 of Article VII of the present Constitution of the State reads as follows:

“The judicial power of the State shall be vested in one Supreme Court, in Circuit Courts, in *County* and Probate Courts and in Justices of the Peace.”

Section 28 of Article VII provides:

“County Courts shall have exclusive original *jurisdiction* in all matters relating to county taxes, roads, bridges, ferries, paupers, bastardy, vagrants, and the apprenticeship of minors, the disbursement of money for county purposes and in every other case that may be necessary to the internal improvements and local concerns of the respective counties.”

In the case of *Pierce v. Edington*, 38 Ark. 150, it was held:

“The County Court is a superior court of record in the sense that within the scope of the subject matters over which it has jurisdiction and in the absence of a showing to the contrary, it will be presumed that it has acted upon facts sufficient to maintain its action.”

In the case of *Board of Directors of St. Francis Levee District v. Redditt*, 79 Ark. 154, an act of the Legislature conferred upon the County Court original jurisdiction in a proceeding for the assessment of damages caused by the construction of a levee by a municipal corporation. It was contended upon behalf of the landowners in the case cited that this act was unconstitutional. The Court in passing upon this question said:

“The Constitution vests in the County Court exclusive original jurisdiction in all matters concerning county taxes, roads, bridges, etc., and then this additional jurisdiction: ‘And in every other case that may be necessary to the internal improvement and local concerns of the respective counties’ (Const. 1874, Art. VII, Sec. 28). Public levees to reclaim overflowed and swamp lands and retrain inundation from the mighty rivers within this State and bordering it are the best types of internal improvement and are indisputably within the contemplation of this clause of the

Constitution. Therefore it follows that the jurisdiction conferred on the County Court in these matters is within the constitutional jurisdiction of that court, and the statutes are not for that reason void."

It is to be noted that the construction of an improved highway by a municipal corporation is exactly the same type of internal improvement as the construction of a levee by another municipal corporation.

Section 33 of Article VII reads:

"Appeals from all judgments of County Courts or Courts of Common Pleas, when established, may be taken to the Circuit Court under such restrictions and regulations as may be prescribed by law."

Section 1533 of Kirby & Castle's Digest of the Arkansas statutes provides that "appeals shall be granted as a matter of right to the Circuit Court from all final orders and judgments of the County Court" * * *.

Section 1430 of same digest declares that upon such appeal the Circuit Court "shall have the jurisdiction of the subject matter to the same extent as though original jurisdiction had been conferred upon the Circuit Court by law".

It would seem to follow as corollary of this act that the jurisdiction of the County Court over the

matter is precisely the same as the jurisdiction that the Circuit Court would have upon appeal. It cannot be gainsaid, under the authorities cited, that this proceeding when it reaches the Circuit Court, which is unquestionably a court and not an administrative board, would become a removable suit. Since under the Constitution and the statutes the County Court has precisely the same jurisdiction as the Circuit Court and since, indeed, it may be stated that the Circuit Court has no jurisdiction except that which the County Court has. It follows that the case must be a suit when it reaches the County Court.

We have already called attention to the fact that the order of the County Court made in this proceeding is: "A final judgment, conclusive, binding and incontestable except by direct attack upon appeal" (Section 14 of the Act, K. & C. Digest 9119), and is under Section 27 of the Act, "a first lien upon said lands and real property as against all persons, firms or corporations having an interest therein" (K. & C. Digest 9120).

As was said by the Court in the *Stutsman case*, *supra*, "it is difficult to appreciate the force of that reasoning which attaches to a proceeding in a court, as to its effect upon the rights of the parties, all the consequences of a suit, but for the purpose of determining the jurisdiction of the Federal Courts hold the same proceeding to be purely administrative."

It follows that the County Court of Arkansas constitutes a part of the judicial establishment of the State as ordained by its Constitution, and, although charged with some duties of an administrative character, is a judicial tribunal and a court of record.

The facts in the case of Madisonville Traction Co. v. St. Bernard Mining Company, 196 U. S. 239, 49 L. ed. 462, are closely analogous, in so far as the character of the court is concerned. That was a condemnation proceeding for the assessment of damages filed in the County Court of Kentucky. The Court found that under the Kentucky Constitution the County Court had judicial, as well as administrative, powers and that the proceeding was one calling for the exercise of the former and the suit removable.

The case cited also disposes of the point made in petitioners' brief that the assessment suit by the petitioners could not have been filed in the District Court in the first instance. Under Section 14 of the Alexander Road Law (K. & C. Digest 9119) the proceedings as to each tract of land are separate, distinct and severable. There is no reason, therefore, why the suit, in so far as petitioners' land is concerned, could not have been filed in the District Court. Even if it could not have been because of the *peculiar procedure* established by the State Court, it would nevertheless have been removable.

The precise question was decided favorably to our contention in the *Stuttsman* case, *supra*, where the Court said:

"It has been held in several decisions that a case cannot be removed into the Federal Court unless it could originally have begun there.

* * * An examination of these decisions, however, will show that the limitation mentioned is based, not upon matters of procedure, but upon those elements specified as essential to jurisdiction in the first section of the Act of 1887-88. To confer original jurisdiction, the following facts, and no others, are necessary: (1) A suit of a civil nature at common law or in equity. (2) It must involve at least \$2,000.00, exclusive of interest and cost. (3) It must arise wholly between citizens of different states, or present one of the other conditions mentioned in the last part of the first section. A proceeding which presents these elements is within the original jurisdiction of Federal Courts, notwithstanding it may involve matters of procedure which would prevent its commencement in those courts. The section defining the right of removal makes no reference to suits which might have been begun in the Federal courts, and the phrase, 'of which the Circuit Courts are given jurisdiction by the preceding section,' ought not to be considered as requiring elements not mentioned in the preceding section. The jurisdiction of the Federal Courts cannot be made to depend upon formal or modal matters; otherwise it would be in the power of the states

to defeat that jurisdiction entirely by hostile legislation hedging about the commencement of suits by a statutory procedure, which could not be employed in the Federal Courts."

We submit that the proceeding initiated by the filing of the assessment lists by the district was (1) one requiring the determination of juridical rights and was an adversary judicial proceeding, and (2) that it was instituted in a constitutional court of the State empowered to hear and determine such rights. The conclusion follows under the authorities cited, including the *Upshur case*, that the proceeding was a "removable suit".

If we interpret the petitioner's second assignment of error correctly, it is grounded upon the misapprehension that the recent act of Congress cited [Act Feb. 26, 1919, c. 48] (*the obvious primary purpose of which was to prevent the reversal of cases on technical grounds*) relieves a litigant of the duty to object or except to any action of the trial court in order to make that action a ground for a writ of error, and imposes upon the Appellate Court the duty to explore the entire transcript of the proceedings below in every case for the purpose of discovering errors committed by the trial court, which were not brought to the attention of the latter court by such litigant, nor made a part of the record by exception.

Thus, in this case, is it asserted that it was the duty of the Circuit Court of Appeals to reverse the case for a new trial because the trial court withdrew the same from the consideration of the jury, although petitioner not only made no objection and saved no exception to such action in the trial court, but moved that Court to make certain findings of fact and declarations of law. The statement of this contention, in the light of the statute cited, is its own answer.

Respectfully submitted,

DANIEL UPTHEGROVE,
GAUGHAN & SIFFORD,
J. R. TURNEY,

Attorneys for Plaintiffs in Error.

St. Louis, Mo.,

September 28, 1920.

COMMISSIONERS OF ROAD IMPROVEMENT DISTRICT NO. 2 OF LAFAYETTE COUNTY, ARKANSAS, v. ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 141. Argued January 26, 27, 1922.—Decided February 27, 1922.

1. A petition for removal to a federal court of a controversy over an assessment on particular lands, involved with others in a general proceeding for assessing all the lands within a road improvement district, was in time, under Jud. Code, § 29, when filed on the day before the day advertised for the hearing in the state court and on which the landowner was required by the state law to file his written objections. P. 551.
2. Under the law of Arkansas, the County Court approves a proposed road improvement district, which then becomes a corporation capable of suing and being sued; appoints, but cannot remove, the

governing commissioners; passes upon their plan of improvement and estimate of cost; appoints assessors who assess the benefits and damages to the several parcels of land included; hears and determines the justice of particular assessments upon written objections filed by landowners affected, pursuant to published notice; equalizes, lowers and raises assessments; and levies a general assessment upon all the land to be collected against the properties in proportion to benefits thus adjudged by proceedings in a court of chancery. Its findings and order are declared to have the effect of a judgment against the property; and appeals from particular assessments of benefits and damages may be taken by either the landowner or the commissioners to a court of general jurisdiction for trial *de novo*. *Held*: That, while the proceedings in the County Court are in the main legislative and administrative, a controversy therein over the benefits and damages to an owner's land is a suit at law within the removal act because, (a) its determination is judicial, like a valuation of property in condemnation, p. 553; (b) the issue is between adversary parties, the road district and the landowner, framed on pleadings, consisting of the assessment book and the owner's objections, to be heard on evidence, and is separable from like issues respecting other landowners, pp. 556, 559; and (c) the County Court, in disposing of such issues, renders what is in name, form, and effect a judgment; and functions as a judicial tribunal under the Arkansas constitution. P. 556.

3. A decision of the state court on the nature of a proceeding under the state statutes is not conclusive on the question of removability. P. 558.
 4. Section 28, Jud. Code, limiting removal to cases within the original jurisdiction of the District Court under § 24, does not deprive a defendant of the right merely because the form of the case in the state court would be awkward in the federal court or require reframing of the complaint and different procedure. P. 561.
 5. Action of the District Court in withdrawing a case from the jury and making findings of fact in the absence of a stipulation under Rev. Stats. §§ 649, 700, but without objection or exception by the parties, is not reviewable by writ of error. P. 562.
- 265 Fed. 524, affirmed.

Certiorari to a judgment of the Circuit Court of Appeals affirming a judgment of the District Court for the respondent railway company in a case involving a road improvement assessment removed from a state court.

Mr. Henry Moore, Jr., for petitioner.

This proceeding is not a suit within the meaning of the federal removal acts. The County Court, in passing upon the benefits received from the building of the road, was acting in an administrative and not a judicial capacity, occupying the position and having the same authority as that of the Board of Supervisors under the constitution of Arkansas of 1868. Since the decision of this cause by the District Court, the Supreme Court of Arkansas has definitely so decided. *Horne v. Baker*, 140 Ark. 172. See also *In re City of Chicago*, 64 Fed. 897; *State v. Barker*, 116 Ia. 96. Distinguishing: *Drainage District v. Chicago, Milwaukee & St. Paul Ry. Co.*, 198 Fed. 253; *In re Mississippi Power Co.*, 241 Fed. 194; and *Smith v. Douglas County*, 254 Fed. 246.

Since the County Court, as a court under the constitution, has no authority over local assessment or over taxes, save county taxes, the legislature, under the state constitution, could not give the court jurisdiction in a judicial capacity to determine the amount of benefits received by lands within the road district. *Cribbs v. Benedict*, 64 Ark. 562.

The question at issue has been finally and definitely settled by *Upshur County v. Rich*, 135 U. S. 467.

Unless the assessors for the road district could have originally filed its report in the United States District Court and asked said court to raise or lower the various assessments, and exercise the authority given by statute to the County Court in its administrative capacity, then this cause could not be properly transferred, since the jurisdiction of the United States courts on removal is limited to such suits as might have been brought originally in said courts. *Cochran v. Montgomery County*, 199 U. S. 260; *In re Winn*, 213 U. S. 458; *Wall v. Franz*, 100 Fed. 681. Distinguishing *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239.

A state constitution may delegate to its courts either judicial powers alone or judicial, administrative and legislative powers, and although cases may be transferred from state to federal courts where judicial power is brought into question, such transfer may not be had where the powers are either legislative or administrative. *Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210, 226.

If there exists the right to transfer each assessment of benefits amounting to more than \$3,000 where the landowner is a nonresident then the wheels of justice may well be clogged with such administrative matters.

The courts of the United States follow the decisions of the courts of last resort in the several States in the matter of the construction of the state constitutions and statutes. The construction here is settled by *Missouri Pacific R. R. Co. v. Izard County Improvement District*, 143 Ark. 261, 267, and *Monette Road Improvement District v. Dudley*, 222 S. W. 59.

Mr. J. R. Turney, with whom *Mr. Daniel Upthegrove* was on the brief, for respondent.

MR. CHIEF JUSTICE TAFT delivered the opinion of the court.

The question in this case is whether a proceeding in a state county court to assess benefits and damages growing out of a road improvement was properly removed to the federal District Court.

The assessors appointed by the County Court of Lafayette County, Arkansas, for Road Improvement District No. 2, imposed an assessment on lands within the district, belonging to the St. Louis Southwestern Railway, a corporation of Missouri, of \$49,706, for benefits from the projected improvement. The book of assessments for the District was filed by the District Commissioners in the office of the County Clerk and the day for

hearing objections by the land owners before the county court was duly advertised. On the day before the hearing, the Railway Company filed a petition for removal to the District Court for the Western District of Arkansas with the necessary bond. That court denied a motion to remand, tried the controversy between the Commissioners of the Road District and the Railway Company, reduced the assessment to \$10,485.48, entered judgment therefor and certified the same to the county court. On error, the Circuit Court of Appeals affirmed the judgment, and the case is here on certiorari.

Under § 28 of the Judicial Code, a suit at common law or in equity between citizens of different States, involving more than \$3,000, may be removed by the nonresident party to the proper federal district court. Under § 29 the petition for removal must be filed on or before the day when defendant is required to answer. The petition herein was filed the day before the hearing as advertised, upon which day the land owner is required by state law to file his written objections. Thus, the requisites of the removal statute were fulfilled if the proceeding was a suit at common law in a state court.

Road District Improvements are provided for in c. 81, Title VII, Crawford and Moses, Statutes of Arkansas. A district is formed upon a petition of a majority of the land owners by the County Court's approval of the district and the projected improvement. C. & M., § 5399. The district then becomes a corporation, with a seal and capable of contracting and suing and being sued. C. & M., § 5402 and § 5404. The court appoints three commissioners, who are the governing body of the corporation. C. & M., § 5405 and § 5407. After appointment, they can not be removed by the County Court, but are independent. *Taylor v. Wallace*, 143 Ark. 67. They submit to the County Court a plan for the improvement and estimate its cost. C. & M., §§ 5409-5419. The County Court

then appoints three assessors whose duty it is to assess the enhanced value which the improvement will give to the various lots of real estate (C. & M., §§ 5419, 5421) as well as the damages, if any, "by reason of right-of-way taken, or other damage sustained." C. & M., §§ 5419, 5421, 5422. The damages "may be paid out of the funds of the district, or by a reduction in the assessment of benefits in proportion to the amount of damages sustained." C. & M., § 5422. The assessments of benefits and damages are noted by the assessors in a permanent book. C. & M., § 5421. The subsequent proceedings as to hearing and judgment are set forth in C. & M., §§ 5423 and 5424, given below in the margin.¹

Appeals from the judgment of the County Court as to assessments of benefits and damages may be taken to the Circuit Court, the court of general jurisdiction, either by the owner or the Commissioners of the District "by filing an affidavit for appeal and stating therein the special matter appealed from, but such appeal shall affect only the particular tract of land . . . concerning which said appeal is taken." C. & M., §§ 5425, 5427. *Wapponoecca Outing Club v. Road Improvement District*, 135 Ark. 196. The Circuit Court tries all such appeals

¹ C. & M. § 5423. Equalization of assessments. As soon as the assessors have completed the work of assessment for the district, they shall certify to same and deliver it to the board of commissioners. The commissioners shall immediately file same in the office of the county clerk, and the county clerk of said county shall give public notice by two consecutive insertions in a publication having a general circulation in said county. Said notice shall give a description of all lands embraced in said district in the largest subdivisions practicable and shall state said assessment of benefits and damages has been filed in said office and shall call upon any person, firm or corporation aggrieved by reason of any assessment to appear before the county court on some date to be fixed by the court not less than five days after the last insertion therein, for the purpose of having any errors adjusted, or any wrongful or grievous assessment corrected,

de novo as if originally brought in that court, C. & M., § 2236; and the judgment is in the same form as in the inferior court. *Wilson v. Hinton*, 63 Ark. 145.

Just as soon as the assessment book is filed in the office of the county clerk who is *ex officio* clerk of the County Court, and the Commissioners submit the estimate of cost of the improvement, the County Court, pending its hearing of objections to assessments, levies an assessment against all the real property in the district, adding ten per cent. to the estimated cost for contingencies, to be collected against the properties in proportion to the benefits then to be adjudged. C. & M., § 5432. The assessments thus determined and confirmed become liens on the property affected, and unless paid, are collected through equitable proceedings brought by the Commissioners of the Road District to sell in the Chancery Court. C. & M., § 5437.

This review shows that the proceedings for the making of this road improvement are in the main legislative and administrative. There is, however, one step in them that fulfills the definition of a judicial inquiry if made by a court. That is the determination of the issue between

and all grievances or objections to said assessment shall be presented to said court in writing. Any person who is damaged by reason of said improvement may appear before said court at the same time, for the purpose of having the assessment of damages adjusted. The county court shall hear and determine the justness of any assessment of benefits or damages, and is hereby authorized to equalize, lower or raise any assessment upon a proper showing to the court.

C. & M. § 5424. Judgment of county court. At the hearing provided for in the preceding section and after the county court shall have considered the assessment of benefits, it shall enter its findings thereon, either confirming the assessment of benefits against said property, increasing or diminishing same, and the order made by the county court shall have all the force and effect of a judgment against all real property in said district, and it shall be deemed final, conclusive, binding and incontestable except by direct attack on appeal.

the Road District on the one part and the land owners on the other, as to the respective benefits which the improvement confers on their lands, and the damages they each suffer from rights of way taken and other injury.

The distinction between a proceeding which is the exercise of legislative power and of administrative character and a judicial suit is not always clear. An administrative proceeding transferred to a court usually becomes judicial, although not necessarily so. In *Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210, 225, 226, this court said:

"We shall assume that when, as here, a state constitution sees fit to unite legislative and judicial powers in a single hand, there is nothing to hinder so far as the Constitution of the United States is concerned. . . . A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter."

The inquiry before the County Court is a proceeding to declare and enforce a liability of lands and their owners as it stands on present and past facts under a law and rules already made by the legislature and the administrative officers.

The determination of benefits in such cases is quite like the valuation of property under condemnation proceedings. "The true inquiry is, what will be the effect of the proposed improvement upon the market value of the real property, including the buildings thereon. The board may consider what the property is then fairly worth in the market, and what will be the value when the improvement is made." *Kirst v. Street Improvement District*, 86 Ark. 1; *Rogers v. Highway Improvement District*, 139 Ark. 322. Assessments for benefits and damages are dif-

ferent in their essential characteristics from those for general taxation. *Paving District v. Sisters of Mercy*, 86 Ark. 109. Though due process of law does not necessarily require judicial machinery to fix values in condemnation, still because of the direct invasion of private right, courts will treat it as a common-law suit whenever it is brought before a court and it becomes removable as such to the federal court. *Boom Co. v. Patterson*, 98 U. S. 403; *Searl v. School District No. 2*, 124 U. S. 197; *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239. Speaking of the power of eminent domain, Mr. Justice Field, in *Boom Co. v. Patterson*, *supra*, said:

"But notwithstanding the right is one that appertains to sovereignty, when the sovereign power attaches conditions to its exercise, the inquiry whether the conditions have been observed is a proper matter for judicial cognizance. If that inquiry take the form of a proceeding before the courts between parties,—the owners of the land on the one side, and the company seeking the appropriation on the other,—there is a controversy which is subject to the ordinary incidents of a civil suit, and its determination derogates in no respect from the sovereignty of the State."

This principle has been extended by this court to benefits set off against damages in *Pacific Railroad Removal Cases*, 115 U. S. 1, 18. In that case the proceeding was for widening a street running through the grounds of a railway company. Under the statute, the hearing was first before the Mayor and a jury who were to determine the actual damage done to each person in consequence of the taking of his property, without reference to the proposed improvement, and, second, to determine the actual benefits conferred upon the City and upon such private property. This court held that the proceeding before the Mayor and common council was only a preliminary inquisition, but that the distinct and separable issues in the

state circuit court between the City and the private owner as to the value of his property taken for the street, and the amount of benefit his remaining property received from the improvements, constituted "a suit" which might be removed to the federal court, even though their determination might delay the state court proceedings. The case rules the one before us so far as the character of the controversy is concerned. We have the same issues here and they are just as separable from benefits and damages of the other owners.

The County Court in hearing this controversy was a judicial tribunal from the time the Commissioners filed the book of assessments in its clerk's office and asked its confirmation. The constitution of 1874 of Arkansas, now in force, declares, in § 1, Article VII, entitled the Judicial Department, that,

"The judicial power of the State shall be vested in one Supreme Court; in Circuit Courts; in County and Probate Courts; and in Justices of the Peace."

Section 28 of the same article provides that,

"The county courts shall have exclusive original jurisdiction in all matters relating to county taxes, roads, bridges, ferries, paupers, bastardy, vagrants, the apprenticeship of minors, the disbursement of money for county purposes, and in every other case that may be necessary to the internal improvement and local concerns of the respective counties. The county court shall be held by one Judge, except in cases otherwise herein provided."

The exclusive jurisdiction of the County Court conferred by § 28, concerns matters which are primarily of an administrative character but which often involve judicial inquiry and action *inter partes*. The County Court may act therein as an administrative body or as a court. The Supreme Court of Arkansas has held the County Court to be a court and capable of rendering judgment in a

proceeding whose judicial character is much more questionable than here. In *Nevada County v. Hicks*, 50 Ark. 416, it decided that every allowance of a claim by the County Court against the county was a judicial order. See *Chicot County v. Sherwood*, 148 U. S. 529, 532; *Delaware County v. Diebold Safe Co.*, 133 U. S. 473.

C. & M. § 5424, quoted above in the margin, directs that after the hearing, the County Court shall make its findings, either confirming the assessments of benefits and damages, increasing or diminishing them, and that the order made by the County Court shall have "all the force and effect of a judgment against all real property in said district, and it shall be deemed final, conclusive, binding and incontestable except by direct attack on appeal." The form of the order of the County Court in this case made after removal, was "It is further considered, ordered and adjudged by the court that the assessment of benefits made against the St. Louis Southwestern Railway Company . . . by the assessors for said district be approved and confirmed by the court." Of course, the statutory designation of the action of a body as a judgment, or the phrasing of its finding and conclusion in the usual formula of a judicial order, is not conclusive of the character in which it is acting. When we find, however, that the proceeding before it has all the elements of a judicial controversy (*Gaines v. Fuentes*, 92 U. S. 10, 20), to wit, adversary parties and an issue in which the claim of one of the parties against the other capable of pecuniary estimation, is stated and answered in some form of pleading, and is to be determined, we must conclude that this constitutional court is functioning as such.

But it is said that the State Supreme Court has held otherwise and that such a decision is binding on us. The question of removal under the federal statute is one for the consideration of the federal court. It is not concluded

by the view of a state court as to what is a suit within the statute. *Upshur County v. Rich*, 135 U. S. 467, 477; *Mason City & Ft. Dodge R. R. Co. v. Boynton*, 204 U. S. 570; *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239. While the decision of the state court as to the nature of a proceeding under state statutes sought to be removed is, of course, very persuasive, it is not controlling because involved in the application of a federal statute and the exercise of a federal constitutional right. The issue as to removal is akin to the question, which sometimes arises in enforcing the inhibition against state laws impairing the obligation of a contract, whether there is a contract under state law. This court decides that for itself. *University v. People*, 99 U. S. 309; *Jefferson Branch Bank v. Skelly*, 1 Black, 436; *Bridge Proprietors v. Hoboken Co.*, 1 Wall. 116; *Delmas v. Insurance Co.*, 14 Wall. 661.

The decision of the Supreme Court of Arkansas relied on is *Missouri Pacific R. R. Co. v. Izard County Improvement District No. 1*, 143 Ark. 261, in which it was held that a proceeding like the one before us in the County Court could not be removed to the federal court because "the duties which this statute devolves upon the county court, as already stated, are administrative and not judicial, although the line of demarcation is very close."

The court further said:

"It will be observed that the power conferred by our statute upon the county court is not to determine whether there should be any assessment, but to equalize and adjust the assessment that has been made by the commissioners. There is nothing in the nature of an adversary proceeding, *inter partes*, in the assessment made by the commissioners and equalized and adjusted by the county court under the authority of the statute."

Our examination of the question leads us to a different conclusion. The book of assessments made by the as-

sessors, as already noted, is presented by the Commissioners of the District as an independent body, representing a fully equipped municipal corporation, capable of contracting and of suing and being sued, to the County Court. They are plaintiffs and petitioners, asking the court to give them a judgment confirming the assessments. The court's record in this case shows them present in person and by counsel praying confirmation.

The statute does not define how the hearing before the county court is to be conducted except that the objections of the land owners are to be in writing, as the book of assessment is. These two documents make the pleadings. It is to be inferred in the absence of any restriction that oral evidence is to be heard on the issues raised by the objections and that the Commissioners in person or by attorney may take part in the hearing. Indeed it was admitted by counsel at the hearing that this is the practice. The proceeding is said to be only equalization but we have already seen that each lot is to be separately considered as to benefits and damages, on appeal. If so, why not on removal? We conclude that the proceeding is adversary and *inter partes*.

The state court really decides that the issue as to the correctness of assessments of benefits and damages is always legislative and administrative. It relies chiefly on two federal authorities. *Upshur County v. Rich*, 135 U. S. 467, and *In re City of Chicago*, 64 Fed. 897. In the former, the county assessors of a county in West Virginia had valued for general taxation a large tract of wild land at a figure its owners deemed excessive. They filed a petition in the County Court asking a reduction and immediately filed another petition for removal of the proceeding to the federal court on the ground of diverse citizenship. This court held on appeal from the Circuit Court, which had denied a motion to remand, that the removal could not be sustained. It said that such assessment of a

general tax was an administrative act, that the County Court in considering the appeal from the assessors was not a court, and that the proceeding was not adversary or a suit "though approaching very near to the line of demarcation" (p. 472). The County Court in West Virginia had no judicial jurisdiction under the constitution of the State except that of probate. It had had in the past other judicial jurisdiction but an amendment of the constitution had taken this away and it was empowered only to exercise duties "not of a judicial nature."

Mr. Justice Bradley, who spoke for the court in the *Pacific Railroad Removal Cases*, *supra*, also delivered the opinion in the *Upshur County Case*, and summed up the conclusion as follows:

"The principle to be deduced from these cases is, that a proceeding, not in a court of justice, but carried on by executive officers in the exercise of their proper functions, as in the valuation of property for the just distribution of taxes or assessments, is purely administrative in its character, and cannot, in any just sense, be called a suit; and that an appeal in such a case, to a board of assessors or commissioners having no judicial powers, and only authorized to determine questions of quantity, proportion and value, is not a suit; but that such an appeal may become a suit, if made to a court or tribunal having power to determine questions of law and fact, either with or without a jury, and there are parties litigant to contest the case on the one side and the other."

The manifest distinctions between the *Upshur County Case* and this are, first, that the question here is not one of general taxation, the difference between which and assessments for benefits and damages we have already pointed out; second, that the County Court of Arkansas, differing from the West Virginia County Court, is a court and by the constitution of the State may exercise judicial

functions in such subjects matter; and, third, that the proceeding is *inter partes*.

The other federal case upon which the State Supreme Court relies, *In re City of Chicago*, *supra*, was a decision of the Circuit Court in a sewer assessment case involving the fixing of benefits which were to be equalized over a district which the assessors found to be fair. The court held it could not be removed from the county court, first, because such an assessment was a mere administrative act, an exercise of the taxing power, and, second, because the benefits could only be fixed with reference to the benefits to all other lots, and the whole case must be removed, if removed at all. The court with difficulty distinguished the *Pacific Railroad Removal Cases*, on the ground that that was a separate investigation as to each lot and that it was mingled with the fixing of damages. These are features which distinguish this proceeding also. Moreover, the case has been criticized and its authority shaken. *In re Stutsman County*, 88 Fed. 337, 341; *In re Jarnecke Ditch*, 69 Fed. 161; *Drainage District No. 19 v. Chicago, Milwaukee & St. Paul Ry. Co.*, 198 Fed. 253, 260.

The next objection is that the Road District Commissioners could not file their assessment book in the federal court, assuming the necessary diverse citizenship, against any lot or lot owner, and so that the inquiry cannot be removed, because, under § 28 of the Judicial Code, removal is limited to cases within the original jurisdiction of the District Court under § 24. This limitation is not intended to exclude from the right of removal defendants in cases in the state court which because of their peculiar form would be awkward as an original suit in a federal court, or would require therein a reframing of the complaint and different procedure. *Sheffield Furnace Co. v. Witherow*, 149 U. S. 574, 579; *Fleitas v. Richardson*, No. 1, 147 U. S. 538, 544. The limitation is that only those

proceedings can be removed which have the same essentials as original suits permissible in District Courts, that is that they can be readily assimilated to suits at common law or equity, and that there must be diverse citizenship of the parties and the requisite pecuniary amount involved. *In re Stutsman County*, 88 Fed. 337; *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239, 246; *Searl v. School District No. 2*, 127 U. S. 197; *Colorado Midland Ry. Co. v. Jones*, 29 Fed. 193.

It is finally contended that the judgment of the District Court should be reversed because it withdrew the case from the jury and then proceeded to make findings. No objection was taken by either party to this course and no exception was taken. Section 649, Rev. Stats., provides that a civil case in the District Court may be tried without the intervention of a jury on a written stipulation of the parties or their attorneys filed with the clerk, in which case the finding of the court on the facts, either general or special, shall have the same effect as the verdict of a jury, and by § 700, Rev. Stats., bills of exceptions may bring such findings before the Circuit Court of Appeals for review on the evidence. But if there be no written stipulation of waiver of a jury, then no questions can arise on writ of error except those which arise on the process, pleadings or judgment. *Bond v. Dustin*, 112 U. S. 604; *Ladd & Tilton Bank v. Hicks Co.*, 218 Fed. 310; *Ford v. United States*, 260 Fed. 657. The Circuit Court of Appeals, therefore, rightly held that no error could be predicated on the action of the District Judge in withdrawing the case from the jury and making findings without objection or exception by the parties.

The judgment of the Circuit Court of Appeals is

Affirmed.

MR. JUSTICE PITNEY took no part in the consideration or decision of this case.